80-499

No.

Supreme Court, U. S.
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In the Supreme Court

OF THE

United States

OCTOBER TERM, 1980

GEORGE R. WILLIAMS, et al.,
Petitioners,

VS.

PACIFIC MARITIME ASSOCIATION, a non-profit corporation, INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION, an unincorporated association, and I.L.W.U. LOCAL No. 10,
Respondents.

APPENDIX TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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Appendix A

George B. WILLIAMS et al.,
Plaintiffs-Appellants,

v.

PACIFIC MARITIME ASSOCIATION
et al., Defendants-Appellees.

No. 77-1398.

United States Court of Appeals,
Ninth Circuit.

Feb. 8, 1980.

Appeal from the United States District Court for the Northern District of California.

Before DUNIWAY and KENNEDY, Circuit Judges, and BONSAL,* District Judge.

KENNEDY, Circuit Judge:

This appeal is from an order of the district court dismissing several claims due to appellants' failure to exhaust contractual remedies, and finding that appellees Pacific Maritime Association (PMA) and the International Longshoremen's and Warehousemen's Union (ILWU) and ILWU Local 10 did not breach a duty of fair representation owed to appellants. We have jurisdiction under 28 U.S.C. § 1291. We disagree with the trial court on the initial question of exhaustion of remedies, but we rule that it was correct in concluding that there was no breach of

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*The Honorable Dudley B. Bonsal, United States District Judge for the Southern District of New York, sitting by designation.

the duty of fair representation. Accordingly, we affirm the judgment.[1]

I

Facts Underlying The Dispute

Appellants are former limited registration Class B longshoremen employed by PMA, an organization of steamship, stevedoring, and terminal companies doing business on the Pacific Coast. The ILWU is the exclusive bargaining representative of longshoremen in the area. Local 10 is the ILWU's constituent local in the Port of San Francisco.

PMA, and the ILWU are parties to a collective bargaining agreement covering substantially all longshore work on the Pacific Coast.[2] Under that agreement, a Joint Port Labor Relations Committee (the "Port Committee"), made up of representatives of PMA and ILWU Local 10, maintained a central dispatching hall for the hiring and dispatching of all longshoremen at the Port of San Francisco. The agreement provided for two classes of longshoremen, the preferred employees, called Class A, and the limited registered longshoremen, Class B. In operating the hiring hall, the Port Committee distributed work

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[1]This court has confronted issues involved in this case on two previous occasions. In *Williams v. Pacific Maritime Ass'n*, 384 F. 2d 935 (9th Cir. 1967), *cert. denied*, 390 U.S. 987, 88 S.Ct. 1181, 19 L.Ed.2d 1290 (1968), we reversed a summary judgment for defendants and ordered a trial. In *Williams v. Pacific Maritime Ass'n*, 421 F.2d 1287 (9th Cir. 1970), we sustained rulings dismissing the individual defendants and claims for punitive and exemplary damages.

[2]PMA signed a succession of collective bargaining agreements with the ILWU and Local 10. At the time of this suit an agreement was in effect covering the period June 16, 1961 to July 1, 1966. Rules relating to registration and deregistration of longshoremen in the Port of San Francisco, adopted about March 18, 1958, were a part of that agreement, and remained in effect until new rules were adopted about June 17, 1963.

among longshoremen according to their registered status. Fully registered Class A longshoremen received priority for available work. Class B longshoremen had limited rights to available work, were subject to stricter rules and more stringent penalties than were applicable to Class A workers, and were ineligible for membership in Local 10. Each worker paid a *pro rata* share of the cost of running the hiring hall.

The agreement provided that Class B workers could apply periodically for promotion to Class A status. At such times, the Port Committee would review the record of the Class B worker and decided whether to grant or deny his promotion or to discharge him entirely. Class B longshoremen could be deregistered at any time for "cause." The causes were not exhaustively enumerated but included pilferage, intoxications, assault, unexcused failures to be available for work, and dropping hours from time sheets or "chiseling."[3] In essence, this system had been in effect since 1934, when longshoring was primarily a labor intensive industry in which the workers manually moved cargo to and from ships. Gradually, economic pressures forced the industry to mechanize. Mechanization required a shift in the work force. It demanded fewer but more highly skilled laborers to operate sophisticated, expensive machinery. *See generally, New York Shipping Association v.*

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[3]The collective bargaining agreement adopted a "low-man-out" ("LMO") system of dispatch, under which longshoremen with the fewest hours of work in a given pay period were dispatched before those who had worked more hours. *See* Pacific Coast Longshore Agreement § 8.42. This system was designed to equalize work opportunities among longshoremen. It depended on an honor system in which each longshoreman was responsible for accurately reporting the hours he worked. If an individual signed in with fewer hours than he actually had worked he gained an advantage over others in the dispatch. This practice was referred to as "signing in as low," "dropping hours," and "chiseling."

Federal Maritime Commission, 187 U.S.App.D.C. 282, 285, 571 F.2d 1231, 1234 (D.C.Cir. 1978); *Pacific Maritime Association (Johnson Lee),* 155 N.L.R.B. 1231, 1233 (1965).

To meet the needs of the industry, PMA and the ILWU agreed early in 1963 to transfer 400 to 450 of the approximately 530 limited registered Class B longshoremen to Class A status and to eliminate the Class B list and deregister all other existing Class B longshoremen. Implementing this decision, the Union and PMA jointly adopted the following standards to guide their selection of the most qualified persons for transfer.

1. Any Class "B" longshoreman found to have 10 or more hours of Low-Man-Out violations shall be considered ineligible for advancement to Class "A" registration.

2. Any Class "B" longshoreman found to have been late in the payment of his pro rata eight or more times (or six or more times with an otherwise blemished record) shall be considered ineligible for advancement to Class "A" registration.

3. Any Class "B" longshoreman found to have failed to meet the 70% availability requirement for any 30-day period shall be considered ineligible for advancement to Class "A" registration.

4. Any Class "B" longshoreman who has been the subject of one or more employer complaints for intoxication or pilferage that the Joint Port Committee has sustained shall be considered ineligible for advancement to Class "A" registration.

5. The standards shall be applied uniformly and no exceptions shall be made.

On June 17, 1963, a few weeks after adopting the new standards, the Port Committee promoted 448 Class B longshoremen to Class A status and ordered the deregistration of all other existing Class B longshoremen, including the appellants, who were notified of their immediate and summary deregistration. The notices did not state the specific infractions, but advised each individual that he had a right to file a grievance with the Port Committee. Until the date they were deregistered all appellants were, and had been for at least four years, registered in Class B and in good standing.

All but two of the appellants and several other deregistered Class B longshoremen requested a hearing by the Port Committee regarding the grounds for the deregistrations. At those hearings, Port Committee representatives notified each longshoreman of the reason he was deregistered and gave each the opportunity to challenge the factual basis for the discharge. Thereafter, the Port Committee conferred with individual longshoremen to establish and document the infractions leading to their deregistrations. With few exceptions there was no dispute over the underlying facts. Rather, the deregistered longshoremen vainly attempted to challenge the standards for dismissal, alleging that the new rules were not reasonably related to the needs of the industry in 1963 and were arbitrary, capricious and unfair, particularly as they were applied retroactively and to conduct that was not a violation of any rule when it occurred.

At the conclusion of the hearings, the Port Committee reinstated four B men whose deregistrations had been based on mistakes of fact, and affirmed the deregistrations of the appellants. The Committee notified each longshoreman whose deregistration had been sustained that he could file a discrimination grievance under the collective bar-

gaining agreement that would institute a collateral attack on the decision sustaining his deregistration.

Section 17 of the Pacific Coast Longshore Agreement created an exclusive, if somewhat complex, mechanism for resolution of disputes arising under the contract. It provided for a series of joint labor relations committees to adjudicate disputes: a joint port committee, a joint area committee, and a joint coast committee. These committees were composed of three or more representatives designated by the union and three or more representatives designated by the employer with each side of the committee having equal vote.

Section 17.15 outlines the grievance procedure for disputes between labor and management.[4] The Port Committee first investigates the dispute and tries to agree on an appropriate resolution.[5] If the union and management sides of the committee cannot agree, the dispute proceeds to the

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[4]17.15 The grievance procedure of this Agreement shall be the exclusive remedy with respect to any disputes arising between the Union or any person working under this Agreement or both, on the one hand, and the Association or any employer acting under this Ageement or both, on the other hand, and no other remedies shall be utilized by any person with respect to any dispute involving this Agreement until the grievance procedure has been exhausted.

[5]17.2 Grievances arising on the job shall be processed in accordance with the procedure hereof beginning with 17.21. Other grievances as to which there are no specific provisions herein shall be processed in accordance with the provisions hereof beginning with 17.23.

17.21 The gang steward and his immediate supervisor, where the grievance is confined to one gang, or any one steward who is a working member of an affected gang where the grievance involves more than one gang or a dock operation, shall take the grievance to

Joint Area Committee for resolution.[6] If the members of the Area Committee also fail to agree on a disposition, the dispute proceeds to an Area Arbitrator for resolution.[7]

If the Port or Area Committee does come to a decision, either party may appeal the decision to the Coast Committee.[8] If the two sides of the Coast Committee fail to

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the walking boss, or ship or dock foreman in immediate charge of the operation.

17.22 If the grievance is not settled as provided in 17.21, it shall be referred for determination to an official designated by the Union and to a representative designated by the Employer.

17.23 *If the grievance is not settled in 17.21 and 17.22 or does not arise on the job, it shall be referred to the Joint Port Labor Relations Committee which shall have the power and duty to investigate and adjudicate it.* (Emphasis added).

[6]17.24 In the event that the Employer and Union members of any Joint Port Labor Relations Committee shall fail to agree upon any question before it, such question shall be immediately referred at the request of either party to the appropriate Joint Area Labor Relations Committee for decision.

[7]17.25 In the event that the Employer and Union members of any Joint Area Labor Relations Committee fail to agree on any question before it, such question shall be immediately referred at the request of either party to the Area Arbitrator for hearing and decision, and the decision of the Area Arbitrator shall be final and conclusive except as otherwise provided in 17.26.

[8]17.26 The Joint Coast Labor Relations Committee has jurisdiction to consider issues that are presented to it in accordance with this Agreement and shall exercise such jurisdiction where it is mandatory and may exercise it where such jurisdiction is discretionary as provided in 17.261, 17.262 and other provisions of this Agreement.

17.261 Any decision of a Joint Port or Joint Area Labor Relations Committee or of an Area Arbitrator claimed by either party to conflict with this Agreement shall immediately be referred at the request of such party to the Joint Coast Labor Relations Committee (and, if the Joint Coast Labor Relations Committee cannot agree, to the Coast Arbitrator, for review). The Joint Coast Labor Relations Committee, and if it cannot agree, the Coast Arbitrator,

agree, the dispute is resolved by a Coast Arbitrator.[9] If the parties to the dispute claim that the decision of the Port or Area Committee conflicts with a provision of the collective bargaining agreement, the appeal to the Coast Committee is a matter of right. On the other hand, if the dispute involves operation of the hiring hall, interpretation of dispatching rules, pay or discharges, it is a matter for the Coast Committee's discretion whether to accept the appeal.[10]

Section 17.4 of the agreement provides a separate procedure whereby an individual longshoreman may bring a claim of discrimination by the union or his employer under Section 13 of the collective bargaining agreement. Section 13 prohibits discrimination against any longshoreman on the basis of race, creed, color, national origin, religious or

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shall have the power and duty to set aside any such decision found to conflict with this Agreement and to finally and conclusively determine the dispute. It shall be the duty of the moving party in any case brought before the Coast Arbitrator under the provisions of this 17.261 to make a prima facie showing that the decision in question conflicts with this Agreement, and the Coast Arbitrator shall pass upon any objection to the sufficiency of such showing before ruling on the merits.

[9]17.27 In the event that the Employer and Union members of the Joint Coast Labor Relations Committee fail to agree on any question before it, including a question as to whether the issue was properly before the Coast Labor Relations Committee, such question shall be immediately referred at the request of either party to the Coast Arbitrator for hearing and decision, and the decision of the Coast Arbitrator shall be final and conclusive.

[10]17.262 The Joint Coast Labor Relations Committee and the Coast Arbitrator shall have power to review decisions relative to the operation of dispatching halls, or the interpretation of port working and dispatching rules, or discharges, or pay (including travel pay and penalty rates), *but shall exercise it in any case only if the Committee decides to review the specific case.* (Emphasis added).

political beliefs, membership or nonmembership in the union, or activity for or against the union.[11] An allegation of a Section 13 violation also begins with the filing of a grievance with the Port Committee. The longshoreman may appeal any decision of the Port Committee to the Coast Committee, and any decision of the Coast Committee to the Coast Arbitrator.

The collective bargaining agreement contains no other provisions for resolution of disputes.

In late July 1963, most of the appellants and several other Class B longshoremen whose deregistrations had been sustained filed grievances with the Port Committee under section 17. Although the written complaints of the deregistered longshoremen contained no references to violations of Section 13, the Port Committee treated the grievances as section 17.4 complaints, alleging discrimination under Section 13. About the same time most of the appellants also entered into state court litigation to recover California unemployment insurance benefits denied by the state unemployment insurance board. The Port

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[11]Section 13 provides:

> There shall be no discrimination in connection with any action subject to the terms of this Agreement either in favor of or against any person because of membership or nonmembership in the Union, activity for or against the Union or absence thereof, or race, creed, color, national origin or religious or political beliefs.

Under section 17.4:

> When any longshoreman (whether a registered longshoreman or an applicant for registration or a casual longshoreman) claims that he has been discriminated against in violation of Section 13 of this Agreement, he may at his option and expense, or either the Union or the Association may at its option and at their joint expense, have such complaint adjudicated hereunder, which procedure shall be the exclusive remedy for any such discrimination.

Committee decided to postpone consideration of the section 17.4 appeals until the unemployment insurance hearings were concluded. The unemployment insurance referee finished taking evidence on April 1, 1964.

On April 15, 1964, nearly nine months after bringing their grievances to the Port Committee and before the Port Committee had begun to consider the claims, appellants filed their complaint in this matter. They alleged that they already had attempted to exhaust the grievance arbitration procedure and prayed that the necessity for further resort to the grievance procedure be enjoined. After appellants filed suit, and following the conclusion of testimony in the unemployment insurance cases, the Port Committee on May 18, 1964 made its first response to appellants' July 23, 1963 letters, advising appellants that it was treating the letters as section 13 grievances and notifying them that grievance hearings soon would be scheduled.

The district court denied appellants' request for a preliminary injunction against further administrative procedures. The Port Committee then considered appellants' claims and held that they had failed to allege a violation of section 13. An appeal to the Coast Committee was similarly unsuccessful, the committee members agreeing that appellants failed to allege a breach of section 13. Appellants did not attempt to appeal further to the Coast Arbitrator.

The district court concluded that the deregistered longshoremen were "not entitled to relief in this court with respect to their deregistration because they failed and refused to exhaust the grievance arbitration procedure of the ILWU-PMA Contract, which they could have exhausted by taking their grievances to the Coast Arbitrator after receiving the notices of the decision of the Coast Labor Relations Committee on November 20, 1964." Appellants challenge the district court's holding, alleging that

they have exhausted available remedies or, in the alternative, that further grievance procedures should be excused as futile. We agree.

II

Exhaustion of Remedies

Appellants' complaint combined two distinct claims. In one they alleged that in agreeing to the rules under which the appellants were deregistered, the union breached its duty to fairly represent all employees in the unit. In the other they contended that in discharging appellants under the new rules the employer and the union breached the collective bargaining agreement. The former is based on the statutory duty of fair representation, the latter on the terms of the contract. Although the two claims are intertwined, the exhaustion considerations for each are somewhat different and will be treated separately.[12]

A. *Breach of the Collective Bargaining Agreement*

It is a well-established principle of labor law that a union and its members must attempt to exhaust the exclusive remedies provided in their collective bargaining agreement with the employer before they seek judicial intervention for breach of the agreement. *See Vaca v. Sipes,* 386 U.S. 171, 184, 87 S.Ct. 903, 913, 17 L.Ed.2d 842 (1967); *Republic Steel Corp. v. Maddox,* 379 U.S. 650, 652-53, 85 S.Ct. 614, 616, 13 L.Ed.2d 580 (1965); *United Steelworkers v. American Manufacturing Co.,* 363 U.S. 564, 566, 80 S.Ct. 1343, 1345, 4 L.Ed.2d 1403 (1960). All parties apparently agree that appellants fully exhausted their remedies for

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[12]Appellees apparently do not allege that the employees failed to exhaust contractual remedies with respect to their breach of contract claim. They only contend that the employees unreasonably failed to exhaust remedies for the alleged breach of the duty of fair representation. Because the two claims were not explicitly separated until trial, however, we discuss exhaustion in both contexts.

the contractual grievance. Section 17.15 of the Pacific Coast Longshore Agreement governs disputes such as this one alleging breach of the collective bargaining agreement, which arise between "any person working under this Agreement . . . on the one hand, and the Association or any employer acting under this Agreement or both, on the other hand." Appellants complied with section 17.15 by appealing the unanimous decision of the Port Committee to the Coast Committee and that decision was unanimously affirmed. No further avenue of review is available for a contractual grievance under Section 17.15.

B. *Breach of the Duty of Fair Representation*

The heart of the employees' claim of unfair representation is that the union breached its statutory duty to plaintiffs by agreeing to the adoption of the 1963 standards for deregistration. Claims alleging breach of the duty of fair representation in *negotiating* the collective bargaining agreement are not subject to the exhaustion requirement. *Beriault v. Local 40, ILWU,* 501 F.2d 258, 266 (9th Cir. 1974). *Cf. Czosek v. O'Mara,* 397 U.S. 25, 27-28, 90 S.Ct. 770, 772, 25 L.Ed.2d 21 (1970) (suit against union for breach of duty of fair representation in processing grievance not subject to ordinary rule that administrative remedies should be exhausted before resort to the courts); *Glover v. St. Louis-S. F. Ry.,* 393 U.S. 324, 329-31, 89 S.Ct. 548, 551-52, 21 L.Ed.2d 519 (1969); *Conley v. Gibson,* 355 U.S. 41, 78 S.Ct. 99, 2 L.Ed.2d 80 (1957). In *Beriault,* which also involved the ILWU contract, this court reasoned that "[t]he failure to exhaust grievance procedures is of no consequence as to these claims because plaintiffs seek modification of the contract, a remedy not available through the grievance procedure." *Beriault v. Local 40, ILWU,* 501 F.2d at 266. Although the claimed breach in the instant case involves negotiation of working rules

rather than contract provisions, we think the same reasoning applies. As discussed below, the working rules were negotiated pursuant to provisions of the collective bargaining agreement permitting such alterations. Once approved, the alterations were incorporated into and for exhaustion purposes became part of the collective bargaining agreement. Because such claims are not subject to exhaustion, appellants are not barred from judicial review.[13] *See also, Vaca v. Sipes,* 386 U.S. 171, 186, 87 S.Ct. 903, 914, 17 L.Ed.2d 842 (1967); *Margetta v. Pam Pam Corp.,* 501 F.2d 179, 180 (9th Cir. 1974).

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[13]Even if the principles of *Beriault* were not applicable, we have doubts regarding appellees' exhaustion defense. The exhaustion requirement is "subject to a number of exceptions for the variety of situations in which doctrinaire application of the exhaustion rule would defeat the overall purposes of federal labor relations policy." *Glover v. St. Louis-S. F. Ry.,* 393 U.S. 324, 329-31, 89 S.Ct. 548, 551, 21 L.Ed.2d 519 (1969). *Accord, Vaca v. Sipes,* 386 U.S. 171, 87 S.Ct. 903, 17 L.Ed.2d 842 (1967). *See* Simpson & Berwick, "Symposium—Exhaustion of Grievance Procedures and the Individual Employee." 51 *Tex.L.Rev.* 1179, 1210-13 (1973).

In the instant case, it is doubtful that the arbitrator could have granted the relief requested, since under the collective bargaining agreement the arbitrator's powers were "limited strictly to the application and interpretation of the agreement as written." Pacific Coast Longshore Agreement § 17.52. He apparently did not have the power to set aside rules adopted under the contract. *Cf. Hotel and Restaurant Employees v. Michelson's Food Services, Inc.,* 545 F.2d 1248, 1253 (9th Cir. 1976) (party not required to submit unfair representation claim to arbitration absent the contract's manifestation of a clear, unequivocal intent to require such arbitration). *Accord, Desrosiers v. American Cyanamid Co.,* 377 F.2d 864, 870-71 (2d Cir. 1967); *Hiller v. Liquor Salesmen's Union, Local No. 2,* 338 F.2d 778 (2d Cir. 1964).

There is, further, a strong indication that the grievance machinery was unreasonably delayed. The requirement of exhaustion is bottomed on the assumption that the grievance procedure is plain, speedy and adequate. *Republic Steel Corp. v. Maddox,* 379 U.S.

We recognize that appellees assumed and the district court apparently agreed that the longshoremen were basing their claims only on section 13 of the agreement. Claims based on section 13 must proceed by way of the grievance procedures outlined in section 17.4. These procedures are somewhat different from those provided in Section 17.15 and would have required the longshoremen to appeal finally to the Coast Arbitrator. However, the assumption that the longshoremen were basing their claims on Section 13 is erroneous.

Nothing in section 13 suggests an effort to prohibit misconduct such as that of which appellants complain. That section was explicitly limited to claims based on race, creed, color, sex, national origin, religious beliefs, political beliefs, membership or nonmembership in the union, and activity

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650, 652-53, 85 S.Ct. 614, 616, 13 L.Ed.2d 580 (1965). The inaction of the Port Committee for almost nine months and its failure to inform appellants of the reasons for the delay make appellants' attempts to invoke the grievance mechanism sufficient to satisfy the exhaustion requirement. *See Seay v. McDonnell Douglas Corp.*, 427 F.2d 996, 1001-02 (9th Cir. 1970).

Finally, employees alleging unfair representation by their union in collusion with management are not required to submit their controversy to a group that in large part is chosen by the defendants against whom their real complaint is made. *Glover v. St. Louis-S.F. Ry.*, 393 U.S. 324, 330-31, 89 S.Ct. 548, 551-52, 21 L.Ed.2d 519 (1969). Those persons representing PMA and the ILWU during the grievance proceedings had either participated in deregistering the appellants or had voiced opinions on their cases. It is unlikely that such persons could be entirely fair and impartial. This lack of neutrality in the adjudicating bodies renders exhaustion of remedies futile. *See generally, NLRB v. Industrial Union of Marine and Shipbuilding Workers*, 391 U.S. 418, 426 n.8, 88 S.Ct. 1717, 1723, 20 L.Ed.2d 706; *Petersen v. Rath Packing Co.*, 461 F.2d 312, 315 (8th Cir. 1972); *Lusk v. Eastern Products Corp.*, 427 F.2d 705, 708 (4th Cir. 1970); *Desrosiers v. American Cyanamid Co.*, 377 F.2d 864 (2d Cir. 1967).

for or against the union. The longshoremen's contentions do not fit any of the above categories.

Furthermore, it is quite clear that no one actively involved in administering the collective bargaining agreement during 1963-64 believed that the appellants' claims even arguably fell within the scope of section 13. The employees did not raise section 13 in their grievances.[14] Moreover, the members of both the Port Committee and

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[14]Appellants first invoked the grievance mechanism by letters dated July 27, 1963. All the longshoremen sent identical copies of the following form letter:

> Dear Sirs:
>
> Your committee de-registered me on June 17. On July 24, I received your letter denying my hearing appeal. In so doing you consummated an action that is discriminatory. You have not judged all the men involved by the same standards.
>
> I appeal your decision and request another hearing as stipulated, where I will prove and document this discrimination.
>
> I have never been able to get from you an official statement specifying the alleged charges against me, nor did your committee produce documents to substantiate the charges.
>
> Would you please correct this situation for the next hearing.

Nowhere does the letter refer to section 13 in general or to individual violations of that section in particular. The complaints simply allege that they were "deregistered" as Class B longshoremen in "an action that is discriminatory." *See Williams v. Pacific Maritime Ass'n*, 384 F.2d 935, 941 (9th Cir. 1967). The letters recited that the 1963 standards were unfair because they applied to conduct or acts that had occurred before adoption of the 1963 standards. The longshoremen had made this point in earlier hearings before the Port Committee.

It was not until the longshoremen received the Port Committee's first response to the letters nine months later that they learned that the Committee had construed the claims as attempts to allege discrimination under section 13. In denying relief, however, both the Port Committee and the Coast Committee (as well as the longshoremen themselves) unanimously agreed that the claim did not fall within the scope of section 13. It appears that the Committee

the Coast Committee unanimously agreed that the employees' claims did not allege section 13 type discrimination.[15] We must conclude from this that appellants suit does not raise section 13 type issues and, therefore, is not subject to the exhaustion requirements of section 17.4.

III

Duty of Fair Representation

The substance of appellants' suit is that the ILWU breached its duty of fair representation to appellants in negotiating the standards under which appellants were discharged. This contention divides into two parts: first, that it was impermissible for the union to treat the B men differently than the fully registered Class A longshoremen; second, that the terms negotiated were arbitrary, were unrelated to the ability to perform longshore work, and constituted *ex post facto* punishment for infractions already atoned for. Both contentions are without merit.

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placed the breach of contract claim in the wrong pigeonhole to begin with and then disposed of the matter by saying that the wrong classification barred consideration of the claim.

[15]Both PMA and ILWU officials understood that section 13 was limited to its literal meaning. For example, ILWU President Harry Bridges explained to one of the deregistered workers before the Coast Commission that the grievance procedure under section 13 was designed only to determine if there was discrimination within the literal language of that contractual provision:

> Mr. Bridges: I think we should tell you, Mr. Love, that in terms of pro rata and those other items, they are determined at the lower level. We don't review them up here in the nature of an appeal. Now, the only thing we look into up here is if there is a charge that you have been improperly dealt with under Section 13 of the Contract, which I have just read, which can be racial, political or religious discrimination. On that matter of low man out or pro rata, *we don't consider that.* That is in command or in charge of the Committee down below. You should understand that. (Emphasis added).

The premise that the union breached its duty of fair representation in agreeing to terms permitting preferential treatment for Class A workers runs throughout appellants' brief and is stated most succinctly in the assertion that "the creation and maintenance of the Class B list was *per se* unlawful." To the contrary, however, the law of fair representation clearly permits a union to negotiate for and agree to contract provisions involving disparate treatment of distinct classes of workers (here provisional workers as compared to fully registered longshoremen) as long as such conduct is not arbitrary or taken in bad faith. *See Ford Motor Co. v. Huffman*, 345 U.S. 330, 338-39, 73 S.Ct. 681, 686, 97 L.Ed. 1048 (1953); *Dugan v. IAM*, 510 F.2d 1086 (9th Cir.), *cert. denied*, 421 U.S. 1012, 95 S.Ct. 2417, 44 L.Ed.2d 680 (1975); *Beriault v. Local 40, ILWU*, 501 F.2d 258 (9th Cir. 1974).[16]

Applying the "bad faith or arbitrariness" standard, we conclude that the appellees are not guilty of unfair representation to the appellants even though fully registered workers received substantially greater benefits under the contract than did probationary Class B workers. The historical reasons for the creation and maintenance of the limited registration Class B list have been noted above, and they clearly demonstrate that a rational basis existed for the distinction between those in the two seniority classes. The unique needs of the industry convince us

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[16]Plaintiffs also appear to contend that disparate contractual treatment of Class B Workers resulted from their nonmembership in the union. The record in this case does not support plaintiffs' contention. Most of the nonunion members of Class B received a clear benefit from the 1963 negotiations, namely, a promotion to Class A status. Those who were denied that promotion were denied it on objective and reasonable grounds. There was no distinction between those promoted and those deregistered in terms of union membership. *See Beriault v. Local 40, ILWU*, 445 F.Supp. 1287, 1295 (D.Or.1978).

that it was not only lawful but necessary for the union to take a good faith position favoring better terms and conditions for one group of employees than for another. As Judge Skopil said when, as a district court judge, he dealt with an identical contention directed to registered and casual lists in the Pacific Coast longshore industry:

> I do not find it unreasonable for defendants to take steps to insure a comfortable standard of living for a large number of regular employees (registered clerks and longshoremen) by giving such employees high priority for the available work even though a minority of members of the bargaining unit (plaintiff casuals and others in the same position) are offered only a limited amount of work during peak periods of waterfront activity.

Beriault v. Local 40, ILWU, 445 F.Supp. 1287, 1293-94 (D.Or.1978). *Accord, Pacific Maritime Association (Johnson Lee),* 155 NLRB 1231, 1234 (1965); *International Longshoremen's and Warehousemen's Union v. Waterfront Employers' Association of the Pacific Coast,* 90 NLRB 1021, 1023 (1950).

Appellants also contend that the union breached its duty of fair representation when it agreed to adopt the 1963 standards under which appellants were deregistered. The premise underlying this contention is that it was unlawful for the ILWU and PMA to agree to review the record of a longshoreman's conduct as a Class B limited registration longshoreman at the time when he would be considered for promotion to Class A full registration status. Appellants urge that a failure to discipline or the imposition of discipline less than deregistration following each infraction barred subsequent consideration of the misconduct in determining whether or not the man would continue to be a longshoreman and so be promoted to Class A full registration status. We conclude, however, that in adopting

and implementing the 1963 standards the union acted neither arbitrarily nor in bad faith.

It is necessary at the outset to dispel the notion that in adopting the 1963 standards for deregistration the appellees violated their duty to provide notice of the conditions under which the employees could be discharged. Appellants claim that the union violated a fiduciary duty owed to appellants when it approved retroactive application of new rules and penalties by PMA and the ILWU without prior notice to the appellants. It is true that the duty of fair representation requires the union to explain to members of the bargaining unit their rights and duties under the collective bargaining agreement. *See Retana v. Apartment, Motel, Hotel, and Elevator Operators Union, Local No. 14*, 453 F.2d 1018 (9th Cir. 1972); *Brady v. Trans World Airlines, Inc.*, 401 F.2d 87 (3d Cir. 1968), *cert. denied, sub nom. International Association of Machinists v. Brady*, 393 U.S. 1048, 89 S.Ct. 680, 21 L.Ed.2d 691 (1969). We are convinced, however, that the union supplied the employees with repeated and adequate warning that the misconduct of which they were found guilty could be the basis for their failure to advance to Class A status. The 1958 "Memorandum of Rules Regarding Registration and De-Registration of Longshoremen in the Port of San Francisco" ("1958 Rules") set out the procedure for bringing new men into registration status as Class B limited registration longshoremen, the powers reserved as to deregistration of these men, the procedure under which men in that status would be promoted to Class A full registration status, and the provisions for a full review of the man's record when his trial period was being terminated.[17] Section 9 of the 1958 Rules provided:

> 9. De-Registration of Limited Registration (Class B) Longshoremen.

[17] *See* 1958 Rules, § 8.

> (a) *A Class B longshoreman . . . may be de-registered for cause by the Joint Labor Relations Committee (in accordance with such rules or uniform procedures as may be established or followed by such Committee)* if the Committee finds:
>
> [(i-x) any of ten types of misconduct or inadequacy for the job of longshoreman] . . .
>
> (xi) Or for any other cause; provided that neither membership or non-membership in the union nor activity or nonactivity for or against the union, shall be a factor in considering applications for registration or in de-registration.

(Emphasis added). The meaning of this provision was brought home to longshoremen applying in 1958 for positions as Class B workers. The application form prepared by the parties emphasized that the privileges of registration could be withdrawn pursuant to rules then in existence or later agreed to in collective bargaining. A letter of explanation that accompanied each application form stated that the applications and the jobs would be subject to the 1958 Rules, and it directed each person to "read the box at the end carefully" warning that it "states the conditions under which your application will be received." Paragraph 4 in the box read:

> Class "B" registration, if granted, shall be subject to agreements between the PMA and ILWU, or their successors, and to *rules with respect to registration and deregistration* established by said parties; I understand that registered longshoremen may be deregistered and that *registration may be revoked in accordance with such agreements and such rules now in effect or hereafter to be agreed upon or adopted* by the Association and the Union or their successors or by the Joint Port Labor Relations Committee.

(Emphasis added). Additional disclosure was made in subsequent letters.

The record establishes, moreover, that even before the 1963 standards for admission to Class A status were negotiated, the appellants understood that the actions for which they ultimately were deregistered constituted misconduct. Each action was specifically prohibited by the collective bargaining agreement or by various working rules adopted by the Joint Labor Committees. The rules of conduct adopted by the Port Committee in 1959 specifically spelled out the obligation of the Class B men to maintain a 70 per cent availability record. This obligation was driven home to the longshoremen in a letter sent to each calling attention to the 70 per cent requirement. Intoxication and pilferage were explicitly prohibited by sections 17.81, 17.82, and 17.823 of the Pacific Coast Longshore Agreement. Longshoremen were admonished several times against late payment or nonpayment of pro rata charges, most notably in letters sent to each worker applying for Class B status. The rule against dropping LMO hours was well known as part of the common law of the shop, and each of the appellants testified he knew that there was a rule against chiseling and that "dropping LMO hours" was misconduct. Other warnings to longshoremen not to engage in such misconduct abound in the record.

Any of the four activities that became the basis for deregistration in 1963 was understood to constitute failure to abide by the "rules and determinations of the Joint Labor Relations Committee," which "can be cause for suspension or loss of registration." Thus, there were no new rules retroactively turning permitted actions of the appellants into misconduct. The actions found to be cause for deregistration were all misconduct under Port Committee rules in effect throughout the period of appellants' registration. This fact and the observation that appellants were warned repeatedly that their records would be reviewed upon their consideration for advancement to Class A status are suffi-

cient to support the district court's conclusion that the union did not breach a duty to warn of conduct that might lead to deregistration.

Turning to the standards themselves, we agree with the district court that they were negotiated in good faith and were neither arbitrary nor irrational. As we observed earlier, the differential treatment accorded the B men was necessitated by the inevitable change in the nature of the longshore industry.

The same consideration that resulted in the 1958 Rules establishing the bifurcated system of A and B men also gave rise to the 1963 standards for deregistration or advancement to Class A status. By September 1962, the Coast Committee had come to an agreement that the parties should move toward lifting the freeze on promotion of B men to A status, and PMA had obtained a commitment from the ILWU that as a condition of lifting the freeze there should be an upgrading of the longshore work force as part of the program for selecting limited registration B men for promotion. The record supports the district court's findings that the conduct of both the ILWU and its Local 10 in the negotiations leading to the explicit promotion standards was carried on with motives only of good faith and honesty, in an effort to reach the best agreement for the unit as a whole, and without in any way sacrificing the meritorious positions of any of the individuals in the bargaining unit. In negotiating contract terms, a union often confronts the task of representing employees who have different, often competing, interests. In representing the unit as a whole, the union may agree to terms favorable to some employees and unfavorable to others, provided it acts in good faith. *See, e. g., Lusk v. Eastern Products Corp.,* 427 F.2d 705 (4th Cir. 1970). *See generally, J. I. Case Co. v. NLRB,* 321 U.S. 332, 338-39, 64 S.Ct. 576, 580-81, 88 L.Ed. 762 (1944).

In this case, the criteria by which appellants were deregistered represents such an accommodation. The mere differential effect of these standards does not in itself support a finding that the standards were negotiated in bad faith.

Neither the ILWU nor Local 10 conducted collective bargaining in an improper manner. In the spring of 1963 the parties reached agreement on the four explicit promotion standards enumerated above. We conclude, as did the district court, that the four substantive standards were neither arbitrary nor irrational. Rather, each is justifiable as relevant to the qualifications for employment as a Class A longshoreman.[18]

Late payment of pro rata. As the NLRB concluded on this very issue, it is not irrational or capricious to believe that one who is lax in meeting his obligations to his fellows to share the costs of the dispatching hall may not develop into a conscientious and reliable worker. *Pacific Maritime Association (Johnson Lee)*, 155 NLRB 1231, 1234 (1965).

Chiseling. A record of dropping low-man-out hours also indicates that an individual's promotion to permanent status will not contribute to upgrading the work force. An individual caught more than once chiseling on an honor system does not present a convincing portrait of one who will improve the work force. This is particularly true where as here there was little apparent chiseling in the entire group of Class B workers.

Availability. Similarly, it is reasonable and logical to assume that one who has a record of poor availability when

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[18]The appellees were not restricted to adopting only physical standards. The work force appellees sought to obtain also required individuals of good character. *See Pacific Maritime Ass'n (Johnson Lee)*, 155 NLRB 1231 (1965).

work is relatively scarce will not help meet the need for a steady, permanent work force.

Employer complaints. Appellants allege that because the men deregistered for employer complaints of intoxication (or involvement in a work stoppage where alcohol was a factor) were very careful after returning from suspension not to be involved in any subsequent incidents, the complaints on their records have no significance regarding their qualifications as Class A workers. The observation that only a very few employees had such complaints on their records indicates that the employers did not file such complaints frivolously. Although it may be said that the standards were strict at the time of promotion, it cannot be said that they were irrational or illogical in believing that those who had been subject to such employer complaints were not desirable material to add to the permanent work force.

Although deregistration for violation of the standards may appear harsh, this court does not function to substitute its judgment for that of the parties in selecting the yardstick with which to measure a longshoreman's qualifications for admission to fully registered status. The fact that over 80 per cent of the Class B men met the standards demonstrates that the overwhelming majority of them were aware of their obligations under the contract and that the union was remarkably successful in obtaining permanent status for most of the Class B men. The reliability criteria adopted by the appellees to deregister the B men cannot, as a matter of law, be held outside their powers under the contract. The results were harsh but so were the necessities that gave rise to the need for the decision.[19]

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[19]Because we hold that the union did not breach its duty of fair representation towards appellants, we need not decide whether the PMA colluded with the ILWU to deprive the discharged employees of fair representation. *Cf. Hines v. Anchor Motor Freight, Inc.*, 424

IV

Breach of the Collective Bargaining Agreement

Appellants assert lastly that under the collective bargaining agreement the Port Committee could not adopt the 1963 standards without unanimous consent of the Coast Committee and without reducing the standards to writing. Thus, they argue, enforcement of the 1963 standards constituted a breach of the collective bargaining agreement.

Section on 17.851 of the Pacific Coast Longshore agreement provides:

> More stringent rules and penalties than those provided hereinabove that are applicable to limited registered longshoremen or to nonregistered longshoremen or to both such groups *may be adopted or modified by unanimous action of the Joint Coast Labor Relations Committee and, subject to the control of such Committee so exercised, more stringent rules and penalties* applicable to limited registered men or nonregistered men or to both groups *that are provided in existing and future local joint working, dispatching, and registration rules and procedures* or by mutually agreed practices *shall be applicable.*

(Emphasis added). The 1958 Rules as well as the 1963 standards for deregistration were validly adopted by the Port Committee in accordance with the second clause in the subsection. Under that clause the Port Committee was entitled to promulgate future registration rules and procedures subject to the action of the Coast Committee setting them aside in exercise of its ultimate power over this subject.

U.S. 554, 96 S.Ct. 1048, 47 L.Ed.2d 231 (1976); *Vaca v. Sipes*, 386 U.S. 171, 87 S.Ct. 903, 17 L.Ed.2d 842 (1967) (employer jointly liable with union for actions taken in grievance procedure that effect a "cover-up" for employer's contract violations).

Appellants point out that under section 22 of the Pacific Coast Longshore Agreement, "No provision or term of this Agreement may be amended, modified, changed, altered or waived except by a written document executed by the parties hereto." They claim that because the 1963 rules for deregistration were not in writing, enforcement breached section 22. As collateral operating procedures whose adoption is expressly authorized by section 17.851 of the collective bargaining agreement, these rules merely elaborate the basic terms of the agreement. Accordingly, they were not subject to the requirements of section 22.

Because the 1963 Rules were adopted pursuant to the explicit procedures provided in the PCLA, enforcement of them to deregister appellants did not breach the collective bargaining agreement.

CONCLUSION

We believe that the district court erred in concluding that appellants failed to exhaust required grievance procedures. We nevertheless affirm on the merits because appellants have not demonstrated that PMA or the ILWU or its constituent Local breached either a duty of fair representation owed to appellants or the terms of the Pacific Coast Longshore Agreement.

AFFIRMED.

Appendix B

United States Court of Appeals
For The Ninth Circuit

No. 77-1398

George R. Williams, et al.,
Plaintiffs-Appellants,

v.

Pacific Maritime Association, a nonprofit corporation, International Longshoremen's & Warehousemen's Union, an unincorporated association, et al.,
Defendants-Appellees.

[Filed May 13, 1980]

O R D E R

Before: DUNIWAY and KENNEDY, Circuit Judges, and BONSAL,* District Judge.

The panel as constituted in the above case has voted to deny the petition for rehearing. Judge Kennedy has voted to reject the suggestion for a rehearing en banc, and Judges Duniway and Bonsal have recommended rejection of the suggestion for rehearing en banc.

The full court has been advised of the suggestion for en banc rehearing, and no judge of the court has requested a vote on the suggestion for rehearing en banc. Fed. R. App. P. 35(b).

The petition for rehearing is denied and the suggestion for a rehearing en banc is rejected.

*Honorable Dudley B. Bonsal, United States District Judge for the Southern District of New York, sitting by designation.

Appendix C

In the United States District Court
for the Northern District of California

Civil No. 42284 GBH

George B. Williams, et al.,
Plaintiffs,

v.

Pacific Maritime Association, et al.,
Defendants.

[Filed August 27, 1976]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

INTRODUCTION

Few cases which survive the jousts and skirmishes of pre-trial and proceed to the rigor of trial can be disposed of in a summary manner, and the instant case is certainly no exception. The voluminous briefs and files in this matter represent the culmination of years of preparation and weeks of difficult trial.

All counsel are warmly congratulated by the court for their patience, dedication and thoroughness. No party could have finer representation than was afforded the participants in these proceedings.

This cause came on regularly for trial before the Court sitting without a jury, on January 14, 1974, and continued with the taking of live testimony until July 3, 1974.

The plaintiffs were represented by Arthur Brunwasser, Esq., and Fred Kurlander, Esq. Defendant Pacific Maritime Association (hereinafter "PMA") was represented

by Richard Ernst, Esq., Dennis Daniels, Esq., and Kendall DeBevoise, Esq., of the firm of Ernst & Daniels. Defendants International Longshoremen's & Warehousemen's Union and ILWU Local No. 18 (hereinafter sometimes "Union defendants") were represented by Richard Gladstein, Esq. and Norman Leonard, Esq., of the Firm of Gladstein, Leonard, Patsey & Andersen.

The trial was bifurcated, and this first stage was concerned with the issue of liability only. Oral and documentary evidence was introduced by and on behalf of each of the parties. Thereafter, counsel for all parties prepared a written Stipulation as to Testimony which was filed on February 28, 1975. Subsequently, further documentary material was incorporated into the record.

After all parties had rested, the parties filed their post-trial briefs and proposed Findings of Fact and Conclusions of Law, and the cause was then submitted to the Court for decision.

The Court has considered all the evidence and testimony adduced at the trial and in the Stipulation and has studied the briefs of counsel. Being fully advised in the premises, and on the basis of all the evidence not subject to legal objection, this Court now makes its Findings of Fact and Conclusions of Law as follows:

FINDINGS OF FACT

The parties.

1. Plaintiffs are former limited registration Class B longshoremen who commenced their employment in June and August 1959 in the Port of San Francisco. They were discharged or "deregistered" from this employment on June 17, 1963.

2. Defendant Pacific Maritime Association is a non-profit California corporation composed of all or substan-

tially all of the major stevedoring employers on the Pacific Coast and in the Port of San Francisco. It is an "employer" within the meaning of § 2(2) of the National Labor Relations Act, 29 U.S.C. § 152(2).

3. Defendant International Longshoremen's and Warehousemen's Union (the "ILWU") is the certified collective bargaining representative for all longshoremen employed by the members of PMA and is recognized as such under § 2(5) of the Act, 29 U.S.C. § 152(5).

4. The plaintiffs were among the longshoremen comprising the unit represented by the ILWU as the certified collective bargaining representative.

5. Defendant ILWU Local No. 10 ("Local 10") is the chartered local affiliate of defendant ILWU for longshoremen working in the Port of San Francisco.

Collective bargaining through 1948.

6. Since 1934, there has been in continuous existence a collective bargaining relationship between the PMA ("PMA is used herein to refer to the Pacific Maritime Association and its predecessors, including the Waterfront Employers Association of San Francisco and the Waterfront Employers Association of the Pacific Coast and the Shipowners Association of the Pacific Coast) and the ILWU ("ILWU" is used herein to refer to the ILWU and its predecessor from 1934 to 1938, International Longshoremen's Association, District 38).

7. In 1934, there was a bitter longshore strike on the West Coast. It was finally concluded on the basis of an award entered by the National Longshoremen's Board. This was a board appointed by President Roosevelt. Its chairman was Archbishop Hanna. The other members were O. K. Cushing, Esq., and Edward F. McGrady, Assistant Secretary of Labor.

8. A principal demand of the longshoremen striking in 1934 was that there be a limitation on indiscriminate entry into the longshore work force, with a limited group of longshoremen to have preference in the assignment of work and to be assigned to jobs through a hiring hall to be operated by the longshoremen.

9. The Archbishop Hanna award established the system of registering longshoremen, so that the longshoremen with significant seniority were placed on a list of registered longshoremen and were given first preference for all of the work available to longshoremen in the port. This award also called for the use of a dispatching hall for the dispatching of longshoremen to work. It provided that the hall would be under the joint control of the employers and the union, but that the dispatchers themselves would be elected by the union.

10. The Archbishop Hanna award provided for a system of labor relations committees. These committees were given the administrative function of operating the dispatching halls. In addition, they were given the duty of investigating and resolving grievances that either the union or the employer might bring against the other party.

11. The fundamentals of the registration system, which were established in 1934, have been embellished and refined since that date.

12. By 1938, there were three groups of longshoremen. The group with the highest seniority were those that had full registration under the existing contract; they had first call on all the work. A second group of employees had second preference for the work and had a seniority status in the industry giving them some continuity of employment. The third group embraced the workers who came and went as peaks on longshore work required the use of extra men.

13. For the fifteen years from 1934 through 1948, the nature of the PMA-ILWU collective bargaining was one of continuous guerrilla warfare.

14. In 1948, a particularly bitter and extended strike occurred in the longshore industry on the West Coast.

Collective bargaining after 1948.

15. After 1948, the nature of the ILWU-PMA collective bargaining was sharply different. The theme of the collective bargaining between the ILWU and the PMA between 1948 and 1963 was that there should be joint efforts to find a way to preserve and develop the West Coast stevedoring industry so that (a) increasingly improved wage scales for the work performed and continuity of employment could be provided to the registered longshore work force, and (b) the employers could achieve a stable industry enabling them to operate their businesses on a continuing basis in a manner efficient enough so as to provide a fair return on their investment while generating the cash flow necessary for such a wage scale.

16. One of the enlightened, forward-looking steps that the parties achieved after the 1948 strike was the milestone agreement for mechanization and modernization of the West Coast waterfront industry (the "ILWU-PMA M & M Agreement"). By this contract amendment, the ILWU agreed to the introduction of labor-saving devices and the elimination of certain restrictive work practices and it agreed to the basic demand of the employers that the longshore work force should be upgraded. The M & M Agreement made significant achievements toward this goal. By it, the employers agreed to make payments of $29 million to mitigate the impact on employes of technological unemployment, and agreed to assign longshoremen to all the new equipment and to give them the necessary training to hold jobs in a much more "capital intensive" mode of operations.

It was hoped that this would end a long and troubled history of labor discord on the West Coast waterfront.

17. The ILWU-PMA collective bargaining contract in effect during all the periods material hereto included, *inter alia,* a basic contract document entitled "Pacific Coast Longshore Agreement" (hereinafter "PCLA"), local working rules, local dispatching rules, a Memorandum with respect to Registration and Deregistration adopted in 1958, minutes of the San Francisco Joint Port Labor Relations Committee (hereinafter "JPLRC") and rules, determinations and procedures adopted by the JPLRC, minutes of the Northern California Joint Area Labor Relations Committee (hereinafter "Joint Area LRC") and rules, determinations and procedures adopted by the Joint LRC, minutes of the Joint Coast Labor Relations Committee (hereinafter "Joint CLRC") and rules, determinations and procedures adopted by the Joint CLRC, decisions of area and coast arbitrators, determinations of the parties, and the industrial common law of the shop developed under this particular contract during the period since 1934.

18. The ILWU-PMA collective bargaining contract makes provisions for a Joint Port Labor Relations Committee for each port, one of these being the JPLRC, a Joint Area Labor Relations Committee for each of the four areas of Washington, Oregon, Northern California and Southern California, respectively, one of these being the Joint Area LRC, and the Joint Coast Labor Relations Committee (the Joint CLRC).

19. These labor relations committees have duties in the maintenance and operation of the dispatching hall, in the control of the registered lists of the men in the port, in administering the contract, in investigating and adjudicating all grievances and disputes, including complaints against longshoremen and other disputes involving the

ILWU-PMA contract. Generally, the JPLRC has the authority to maintain and operate the San Francisco dispatching hall and to exercise control of the registered list in San Francisco and to investigate and adjudicate all grievances and disputes arising with respect to operations in San Francisco. The JPLRC had a special B-list panel that handled issues as to the registration status of limited registration Class B men for the period relevant hereto, including the time when the applications submitted in 1958 were being reviewed to select those applicants who should be granted Class B limited registration status and the time when the B-list panel members participated in the conferences with plaintiffs and other limited registration longshoremen in July of 1963. The Joint AREA LRC has an intermediate appellate authority with respect to certain disputes. The Joint CLRC has ultimate control over the registered lists, has appellate authority with respect to decisions in the lower labor relations committees, and has additional authority with respect to the carrying on of collective bargaining during the period of the contract's term.

20. Beginning on or about January 1, 1952, the San Francisco dispatching hall was operated through the "low-man-out" system of equalizing work opportunities. Under this LMO system, each man kept a record of the hours that he worked and the other hours chargeable to him under the procedures governing this system, the resulting figure being the individual's "accumulated LMO hours". Every three months, a new work equalization period began at which time each of the registered men started out afresh from a zero accumulated LMO hours figure. During the work equalization period, the men were dispatched on a "low-man-out" system, under which the man whose work number was correctly entered on the master dispatch sheets used in the dispatching hall at the lowest accumulated LMO

hours figure was entitled to the first dispatch to a job. The integrity of the system depended upon the honesty and accuracy of the individual's records kept by each longshoreman and upon his using the correct accumulated LMO hours figure in his use of the dispatching hall. This system was described at the trial as an "honor system".

21. It was possible for an individual registered longshoreman to get an advantage over his fellows by being dispatched at an accumulated LMO hours figure that was below his true LMO hours figure. To take a job under these circumstances was to "drop LMO hours". Local 10 employed record checkers who from time to time reviewed the records as to the dispatch of longshoremen to determine whether or not any Class A full registration longshoremen had dropped an excessive number of LMO hours.

The status of the limited registration Class B longshoremen.

22. In the 1950's, agreed procedures were developed through bargaining between the ILWU and the PMA to establish a formal limited registration Class B category of longshoremen. These men were to have a probationary or second-class status. They were to have the second preference in the amount of available work. It was agreed that the limited registration Class B longshoremen would be selected by formal procedures, including review of detailed information as to their past history and the use of physical examinations. These men would hold limited registration Class B status subject to stricter rules and more stringent penalties than were applicable to the full registration Class A longshoremen under the contract and common law of the shop that had developed over the years since 1934, which would continue in effect but be applicable only to the longshoremen with a seniority status established through years of service, the fully registered Class A longshoremen.

23. In keeping with the nature of the status of the limited registration Class B longshoremen, the contract provided that he could be deregistered for any cause, except only if such action would constitute a violation of § 13 of the PCLA, the contract's provision prohibiting arbitrary action, to wit: discrimination "in connection with any action subject to the terms of the Agreement either in favor of or against any person because of membership or nonmembership in the Union, activity for or against the Union or absence thereof, or race, creed, color, national origin or religious or political beliefs".

24. The grievance-arbitration procedure for § 13 grievances was set out in § 17.4 of the PCLA. This procedure gave the individual member of the bargaining unit the right to process a claim that § 13 had been violated. He was given full control of his grievance. He could carry it to the Joint CLRC and on to the Coast Arbitrator if he wished to do so. He could use his own counsel in the proceedings before the Coast Arbitrator. The union could not prevent him from processing his grievance, but he and his union could agree to proceed together on his grievance claim.

25. The parties agreed that there would be a review of the full record of each Class B limited registration longshoreman at the time he could apply for promotion and that he could be deregistered if the JPLRC found cause therefor upon consideration of his work history and all phases of his qualifications to do all of the work of longshoremen, including consideration of ability, efficiency, experience, regular availability and other relevant factors.

26. In 1958, the parties agreed that a group of limited registration Class B longshoremen should be added to the longshore work force in San Francisco. To this end, an application form was developed and notices issued that men could apply for Class B limited registration status in the port of San Francisco. Some 9,000 applications were

filed. Plaintiffs were among those who filed applications at this time. The group of limited registration Class B men of which plaintiffs were a part included all of the limited registration Class B longshoremen holding such registration status from 1959 until or after August 1, 1963.

27. The application for Class B limited registration, which each plaintiff and all the other applicants for Class B limited registration status signed and filed in 1958, notified the applicant that the job for which he was applying would not have the same security as that of a Class A fully registered longshoreman, but would be subject to the rules and determinations of the joint labor relations committees and the parties. The plaintiffs testified that they paid little attention to this information.

28. At the time that each of the limited registration longshoremen who were registered in 1959 was advised that he should come to the JPLRC to arrange for his physical examination if he chose to have his application considered further—and on the letter so advising the applicant—he was notified that he was required to make a prorata share payment to the union each month to cover his share of the costs of the dispatching hall, the labor relations committee, etc., and that he could be deregistered for failing to pay the established pro-rata amount or for failing to live up to any JPLRC rules or determinations. Although the plaintiffs were so notified at this time, they testified that they paid little attention to this information.

29. There were JPLRC rules and determinations that a limited registration Class B man was not to drop LMO hours in using the honor system for assigning work to longshoremen on an equal share basis, that a limited registration Class B longshoreman was not to participate in work disruptions (and especially not in any in which the drinking of alcohol was a significant factor), that a limited reg-

istration Class B longshoremen was to pay his pro-rata on time each month, and that the limited registration Class B longshoreman was to maintain 70% availability. The plaintiffs admitted that they did not pay attention to the fact that these rules were rules and determination of the JPLRC.

30. At about the time he first began to do longshore work as a limited registration Class B longshoreman, each of the plaintiffs was given written notice that his record as a longshoreman would be reviewed at the time he would be considered for promotion and that misconduct for such things as dropping LMO hours, failing to maintain availability, or being involved in work disruptions would count against him at that time. The plaintiffs stated that they paid little attention to this information.

31. In July 1959, each of the plaintiffs was sent a copy of the provisions of the Memorandum on Registration and Deregistration, stating that he could be deregistered for any cause other than by an action that would be prohibited by § 13 of the contract. The plaintiffs stated that they paid little attention to this document.

32. From the day that each Class B man gained limited registration, he was repeatedly and clearly informed that he was in a second-class category, that he had to keep his "nose clean", that he should live up to all the rules, that he could be deregistered for failing to live up to the rules, and that the union and the employer were keeping records with respect to his misconduct to which they would give consideration when the time came for him to be reviewed for promotion.

33. The limited registration Class B longshoremen were informed early in 1960 that the union was in agreement with the employer that a man who gave cause for deregistration would be deregistered rather than promoted to full

registration Class A seniority status when his record was reviewed for promotion consideration.

34. Each limited registration Class B longshoreman was duly and repeatedly informed that—if he was to be assured of promotion to the coveted seniority status of a Class A fully registered longshoreman—it was necessary that he maintain an absolutely clean record as to "misconduct" contrary to any rule or determination of the JPLRC applicable to limited registration Class B longshoremen.

35. As a result of the information given to the plaintiffs, in written and oral forms, each of the plaintiffs was and is chargeable with knowledge that misconduct of all of the types considered by the JPLRC in determining who would be promoted and who would be deregistered in the spring of 1963 was misconduct for which the limited registration Class B longshoremen could be deregistered.

36. In 1960, Local 10 reviewed the records of over 300 limited registration Class B longshoremen before finding 163 of them whom it would agree were eligible under the contract for promotion. In doing so, it reviewed each individual's record as to the time of paying his pro-rata and as to how many LMO hours he had dropped.

The 1960-1962 period.

37. During the period that plaintiffs were limited registration longshoremen, beginning with June or August, 1959, and continuing until June of 1963, the JPLRC from time to time accumulated the date as to the availability of the Class B limited registration longshoremen and gave notices of deregistration to all those who appeared to have failed to meet the 70% availability standard.

38. Each of the individual longshoremen involved was advised that he could file a grievance with respect to the

notices of deregistration for poor availability, and 339 of the limited registration Class B longshoremen (including 29 of the plaintiffs participating in this proceedings) did so during the period of these reviews.

39. Through the handling of grievances in response to notices of deregistration for poor availability and the handling of other grievances with respect to on-the-job complaints, the JPLRC developed a due, fair and reasonable adjudicative technique that was appropriate for finding out actual facts with respect to the complaints regarding the longshoremen and for applying the contract's terms to the facts so found. This procedure was not an adversary procedure, such as is used in the Anglo-American court system, but it was an investigative technique in which the collective bargaining parties and the individuals involved carried on informal procedures to find facts as to a longshoreman's conduct relevant to the issues under the contract. This procedure was fair, due and appropriate under the circumstances and in view of the history in this industry and the general practices of collective bargaining in American industry.

40. As a result of the use of this collective bargaining adjudicative technique, many of the limited registration Class B longshoremen, including 29 plaintiffs, who were given notice of deregistration for poor availability were restored after hearings to registration status, but others were deregistered. In some cases the deregistration was sustained, although the individual longshoreman had not previously been brought before the JPLRC on a poor-availability deregistration issue. In many cases, men were given a second opportunity to maintain 70% availability where an acceptable reason for poor availability was shown at the hearing before the JPLRC. In some cases, individuals were given a third or even a fourth chance to return to registered status after having had a record of

poor availability where a good and sufficient reason for such an unusual work history was provided. An industrial injury could provide such an excuse.

41. During the period in 1960 when Local 10 was making studies as to whom it might agree were eligible under the contract for promotion to fully registered Class A status, the joint CLRC exercised its ultimate control of the registered lists in the ports in California, Oregon and Washington by freezing registration and freezing promotion from limited registration Class B status to the coveted seniority status of Class A full registration. The purpose of this freeze was to avoid making changes in the work force that might have to be reversed later because the need for men in the longshore work force had changed as a consequence of the Mechanization and Modernization programs being put into effect. This was a rational and reasonable exercise of discretion by the ILWU and the PMA as the parties to the collective bargaining contract in carrying on their good-faith collective bargaining in light of the uncertainties in manpower requirements created by the expectation of changes in operations under the M & M Agreement.

42. Approximately one year after the freeze, a motion was submitted by a group of San Francisco longshoremen asking for the promotion of the limited registration Class B longshoremen who had good records. At this time, plaintiff Stanley Weir made a report to the limited registration Class B longshoremen in San Francisco, in which he praised this resolution. He stated that it was then well known that only the better longshoremen would be promoted and that those who failed to live up to the rules that had been publicized as defining misconduct of longshoremen would not be promoted.

43. Factions developed within Local 10 on the subject of promotion of the limited registration Class B men. One group included Selden Osborne, Asher Harer, Hal Yanow, Frank Stout, James Kearney and others; it favored the granting of union membership to the limited registration Class B men and their dispatch with the fully registered Class A longshoremen, even though this would be in violation of the contract and the law. Another faction included Harry Bridges, William Chester, Robert Rohatch, Tommie Silas and others; it was of the opinion that the union should comply with the contract with the PMA and promote only on the basis of joint action between the ILWU and the PMA.

44. The 1962 coast caucus of the ILWU directed the representatives of the longshoremen to negotiate with the employers to lift the freeze.

45. In the contract negotiations of 1962, the ILWU negotiators reached agreement with the PMA that the subject of the freeze on the promotion of the limited registration Class B longshoremen to fully registered Class A status—and the freeze on adding new limited registration Class B men—would be referred to the Joint CLRC for further detailed collective bargaining.

The explicit promotion standards.

46. By September 1962, the Joint CLRC had come to an agreement (a) that the parties should move toward lifting the freeze and (b) that the PMA had obtained a commitment—which the ILWU was bound to honor in carrying on collective bargaining with respect to the conditions under which the freeze would be lifted—that there should be an upgrading of the longshore work force as part of the program for selecting limited registration Class B men for promotion.

47. In the fall of 1962, Local 10 gave consideration to the various types of misconduct that ought to be considered in determining who would be promoted and who would not be promoted to fully registered Class A status. The preliminary discussions as to such considerations included the subjects of the time of paying pro-rata, the dropping of LMO hours, and on-the-job complaints.

48. During the period from October to December, 1962, the staff of the San Francisco office of the PMA reviewed the records of all of the limited registration Class B longshoremen with respect to on-the-job complaints and availability, and submitted a report to the union representatives of the facts found by this review.

49. Early in December 1962, the joint CLRC reached a formal agreement for the lifting of the freeze on promotion of limited registration Class B longshoremen to the coveted seniority status of Class A fully registered men, with the provision that the whole subject would remain under the control of the Joint CLRC and that it would have a sub-committee make studies of various facets of the overall registration problem.

50. In December 1962, there was a meeting between San Francisco representatives of the ILWU and the PMA to exchange facts with respect to the employment records of the limited registration Class B longshoremen and to discuss which causes for deregistration should be pardoned and which should not. At that time, these representatives had data as to late payment of pro rata and the JPLRC actions with respect to misconduct of the limited registration Class B longshoremen during the period that they had been registered for waterfront work. The representatives also discussed giving consideration to actual availability records and to misconduct in the hall by dropping LMO hours.

51. In December 1962, the union representatives on the Joint CLRC advised the members of Local 10 in San Francisco that the ILWU side of the Joint CLRC would support a program for promoting 400 limited registration Class B longshoremen in San Francisco to the coveted seniority status of the Class A fully registered man.

52. In January 1963, the union representatives on the Joint CLRC proposed that there be a preference in reviewing men for promotion based on their union affiliations or lack thereof, but the PMA refused to accept such a system of discrimination. PMA's protest prevailed, and no such discrimination occurred.

53. In early 1963, Local 10 proceeded to make studies to ascertain facts as to misconduct in the dispatching hall shown by the number of LMO hours dropped by each of the individual limited registration longshoremen.

54. At the end of January 1963, each longshoreman on the Pacific Coast was given written notice with his paycheck of his right to handle a grievance in his own way, subject to his own control, up through the grievance procedure and up to the Coast Arbitrator (under § 17.4 of the PCLA) with respect to any action that was contrary to his interests and that he claimed was tainted by any arbitrary action on the part of the union or the employer as a result of any claimed discrimination in connection with any action subject to the terms of the Agreement either in favor of or against any person because of membership or nonmembership in the Union, activity for or against the Union or the absence thereof, or race, creed, color, national origin or religious or political beliefs.

55. During the period from January 1963 to approximately May 8, 1963, the parties to the ILWU-PMA contract carried on collective bargaining negotiations as to exactly

how the provisions of the 1958 Memorandum on Registration and Deregistration and particularly the provision of § 9(xi) thereof under which any limited registration Class B longshoreman could be deregistered if the JPLRC found any cause therefor would be applied. Through hard bargaining on this subject of explicit promotion standards, the ILWU was able to persuade the PMA to broaden the area of the joint pardons for violations of the rules and determinations of the JPLRC, violations of the contract, and other misconduct on the job and in the dispatching hall. As a result thereof, the number of limited registration longshoremen who were not promoted was decreased from approximately 150 to 82.

56. In the hard bargaining between the PMA and the ILWU with respect to the explicit promotion standards, there was good-faith collective bargaining in the ordinary course on the part of each of the two parties. The evidence establishes that neither the ILWU nor Local 10 proceeded in such collective bargaining with any motive of malice, hostility, ill-will, bad faith, animosity or invidious considerations toward any limited registration Class B longshoreman, including any plaintiff, or engaged in any arbitrary, discriminatory or invidious conduct as to any such person.

57. The PMA position that it was entitled to an upgrading of the longshore work force was based, fundamentally, on the provisions of § 17.851 of the PCLA, which reads:

> "17.851 More stringent rules and penalties than those provided hereinabove that are applicable to limited registered longshoremen or to nonregistered longshoremen or to both such groups may be adopted or modified by unanimous action of the Joint Coast Labor Relations Committee and, subject to the control of such Committee so exercised, more stringent rules and penalties applicable to limited registered men or nonregistered men or to both groups that are provided in

existing and future local joint working, dispatching and registration rules and procedures or by mutually agreed practices shall be applicable."

Pursuant to this understanding, and to carry out its intent, and pursuant to other contract provisions (a) the 1958 Memorandum as to Registration and Deregistration—including its provisions for a review of the entire record of a limited registration Class B longshoreman at the time he is considered for promotion and the § 9(xi) provisions that such a longshoreman can be deregistered for any cause —was adopted; (b) the JPLRC prepared the applications for limited registration Class B status, issued them, issued its letter of February 25, 1959, agreed to the provisions set out in its minutes of June 17, 1959, and distributed excerpts from the 1958 memorandum and these minutes; and (c) the union and the JPLRC representatives warned plaintiffs of their need to obey all the rules on pain of deregistration.

58. The evidence establishes that the conduct of both the ILWU and its Local 10 in the negotiations leading to and agreeing upon the explicit promotion standards was carried on with motives only of good faith and honesty in an effort to reach the best agreement for the interests of the collective bargaining unit as a whole and without in any way sacrificing the meritorious positions of any of the individuals in the bargaining unit.

59. During the negotiations, the PMA carried on a good-faith effort to see to it that there would be an upgrading of the longshore work force and to enforce the commitment obtained from the ILWU for good and adequate consideration that it would participate in such an upgrading program.

60. In the spring of 1963, through the good faith collective bargaining described above, the parties reached agreement on the explicit promotion standards which included four substantive standards. They agreed that a

limited registration Class B longshoreman would not be eligible to be promoted (a) if he failed to meet the 70% availability standard, unless he established a good and satisfactory reason therefor, or (b) if he dropped 10 or more LMO hours, or (c) if he had been suspended by the JPLRC for being involved in a work disruption in which alcohol was a significant factor, or (d) if he had failed to pay his pro-rata on time on 8 or more occasions or, if he had an otherwise blemished record, had failed to pay his pro-rata on time on 6 or more occasions. The explicit promotion standards also included provision that anyone who failed to meet these standards would be deregistered and that the standards should be uniformly applied to all applicants from the limited registration Class B list.

61. On the basis of all of the evidence not subject to legal objection, this Court finds that the explicit promotion standards were rationally related to the needs of the industry as they existed in the spring of 1963 and were not arbitrary, capricious, in bad faith, nor were they a pretext for engaging in any unlawful, illegal or improper conduct against any limited registration Class B longshoreman, including the plaintiffs individually and as a group. The parties reasonably and in good faith believed that they were, and the Court specifically finds that they were, a fair, honest and reasonable resolution of the issues presented by the manpower needs of the industry for competent and reliable workers under the Mechanization and Modernization program as these needs appeared to them to exist, and as in fact they did exist, in the spring of 1963.

62. As they provided in the representation of the longshoremen in all matters relevant to this proceeding, the ILWU and its Local 10 provided fair representation to all of the employes in the collective bargaining unit—including each of the limited registration longshoremen and accordingly each of the plaintiffs—in negotiating the explicit

promotion standards. In this representation, neither the ILWU nor its Local 10 acted on the basis of any malice, hostility, bad faith, animosity, or ill-will toward any of the persons in the collective bargaining unit, including the plaintiffs as a group and each of them, and neither of the union defendants engaged in any invidious, arbitrary, discriminatory, capricious, irrational or unfair activity in regard thereto.

The implementation of the explicit promotion standards.

63. During the spring of 1963, the JPLRC reviewed all the data available to it and reached findings of fact as to the compliance of each of the limited registration Class B longshoremen with the four substantive promotion standards.

64. On March 28, 1963, the JPLRC sent notices of deregistration to each of the 88 limited registration Class B longshoremen whose record indicated that he had failed to maintain 70% availability in one or more 30-day periods since the previous check on availability in April 1962. Grievances with respect to these notices were filed by 76 of those sent such notices.

65. At its meeting on April 24, 1963, the JPLRC held hearings on these grievances and made determinations in respect to 88 cases. The final decisions with respect to 16 cases were that the men be deregistered; with respect to 57 cases, the decisions were that the man be reinstated with probation; with respect to 6 cases, the decisions were that the man be reinstated without probation; and 9 cases were held over for medical reasons. On the basis of all the evidence not subject to legal objection, the Court finds that these procedures were due, fair, appropriate and reasonable.

66. Due notice was given to the limited registration Class B longshoremen early in May 1963 that they could

apply for promotion to fully registered Class A status, that those who did not qualify for promotion would be deregistered, and that any limited registration Class B man was entitled to use the grievance machinery in case he was notified that the information in the hands of the JPLRC indicated that he was not qualified for promotion or had given cause for deregistration.

67. The JPLRC issued applications for promotion, and all limited registration Class B longshoremen filed such applications in May 1963, with only a few exceptions. Plaintiffs James Green, James Lankford and Thomas E. Nisby did not even file applications for promotions. All other plaintiffs did file applications for promotion to Class A full registration status.

68. During the period beginning no later than on or about May 10, 1963, Local 10 of the ILWU had made arrangements under which it provided Asher Harer to act as ombudsman-advocate on behalf of each of the limited registration Class B longshoremen who had failed to receive notice that he had satisfied all of the explicit promotion standards. Asher Harer was a member of Local 10 who had experience as a record checker for over 10 years and who was highly sympathetic to the plaintiffs and as ombudsman-advocate on behalf of them and other limited registration Class B longshoremen he conducted himself in an enterprising and industrious manner. He was a member of a faction in Local 10, apparently opposed to that including Harry Bridges, William Chester, Robert Rohatch, Tommie Silar, J. Walker, Albert James, Carl Smith and others.

69. Asher Harer as the ombudsman-advocate carried on a vigorous effort, for long hours over many weeks of time, to assist each of these limited registration Class B longshoremen in getting full information as to the facts

that appeared to prevent such longshoreman's being found to have met all of the explicit promotion standards, to gather evidence that would be helpful to the limited registration Class B longshoreman in proving that he had satisfied all these standards, and in developing arguments to support his grievances.

70. The ombudsman-advocate presented evidence that he gathered as to 30 or more individual cases to the union representatives on the B-list panel of the JPLRC, and the members of that panel exchanged evidence with the ombudsman-advocate. As a result of these cooperative efforts, agreement was reached among the members of the B-list panel of the JPLRC and the ombudsman-advocate as to 28 individuals. They agreed that 9 limited registration Class B longshoremen who had previously apparently failed to satisfy the explicit promotion standards did actually satisfy these standards. These men were subsequently promoted. As to the other 19, they agreed that they were properly deregistered. There was disagreement between the ombudsman-advocate and the members of the JPLRC with respect to two limited registration Class B longshoremen, both of whom are plaintiffs in this proceeding.

71. By May 15, 1963, the JPLRC had determined that approximately 408 of the 560 limited registration Class B longshoremen then registered in San Francisco had satisfied all of the explicit promotion standards.

72. By May 15, 1963, the JPLRC had determined that it needed more information with respect to the remaining applicants for promotion to the covered seniority status of a fully registered Class A longshoreman.

73. Despite the fact that it had not then reached initial determinations on many of the applications on which such determinations could have been made, the JPLRC on

May 15, 1963 agreed to promote the 408 limited registration Class B longshoremen who appeared to be in full compliance with the explicit promotion standards. On May 16, 1963, a substantial number of the 408 men on the JPLRC list of those apparently qualified for promotion were initiated into the Local 10 membership.

74. On the morning of May 17, 1963, the San Francisco longshore dispatch hall dispatched the 408 men on the JPLRC's May 15, 1963, list with the fully registered Class A longshoremen.

75. On May 17, 1963, the Joint CLRC exercised its ultimate control over the registered lists by setting aside the action of the JPLRC in promoting the 408 to full registration Class A status prior to the time it had reached initial determinations as to the status of the remaining limited registration Class B longshoremen. The Joint CLRC took the view, which this Court finds to have been fair and reasonable, that the implementation of the explicit promotion standards should not result in two groups of men among those promoted to the coveted seniority status of Class A full registration longshoremen in 1963 on the basis of whether they were promoted on May 15, 1963 or at a later date.

76. During the period of approximately three weeks following May 15, 1963, the JPLRC reached initial determinations with respect to virtually all of the limited registration Class B longshoremen who were not among the 408 listed in the May 15, 1963 minutes. The JPLRC held meetings at which individual longshoremen appeared and gave information. The JPLRC made a double check as to the LMO hours dropped by anyone who appeared to have dropped an excessive number of LMO hours. The JPLRC continued to study the information submitted by those

men who had appeared at the hearings as to availability information in support of their cases.

77. By June 10, 1963, the members of each side of the B-list panel of the JPLRC had come to agreement as to their side's position as to what was the correct initial determination with respect to the 127 limited registration Class B longshoremen who were not on its list set out in the minutes of its meeting of May 15, 1963, or on the list of 16 of the limited registration Class B men deregistered for poor availability or the list of 9 men who were to provide further medical information that were in the minutes of its meeting of April 24, 1963, and had revised the May 15 initial determinations as to two of the 408 men. The B-list panel members on each side had communicated with the other side of the JPLRC, and both sides were in agreement as to the facts as to every limited registration Class B longshoreman. As a result, there were initial determinations on all the applications of the limited registration Class B men except for individuals then in the armed services, individuals who had grievances pending as to pilferage, and individuals required to provide medical information.

78. By June 13, 1963, the respective sides of the JPLRC had advised their counterparts on the Joint CLRC of what had been done and the Joint CLRC had informally approved the results of the actions in administering the registration lists for the port of San Francisco.

79. In view of another question raised within Local 10, the JPLRC also decided that it should institute procedures to find out if there was any evidence that any limited registration Class B longshoreman who did not meet all the explicit promotion standards was included in the lists they were preparing to state those who were being pro-

moted. It decided that it would correct any error of this type that was shown to exist.

80. During the period prior to June 17, 1963, the members of the JPLRC agreed on a new form of letter to be sent to the limited registration Class B longshoremen whose records indicated that they did not meet the explicit promotion standards. It was agreed that this form of notice would take the place of the form incorporated in the Memorandum as to Registration and Deregistration adopted by this same committee in 1958.

81. On June 17, 1963, the JPLRC formally concluded its work in administering the limited registration Class B list in San Francisco by sending out notices to 78 limited registration Class B longshoremen that they had been deregistered, by notifying 448 longshoremen that they had been promoted to the coveted seniority status of a Class A fully registered longshoreman, and by listing the individuals as to whom further consideration would have to be given before a final determination could be made because the man was in the armed services, or the man had a grievance pending as to pilferage, or because the man had to provide information as to his future medical condition. Using the form of notice that it had adopted during the month of June, 1963, the JPLRC sent notices of deregistration to the 78 men. This notice advised each man that he had a right to file a grievance and that the grievance would be considered by the JPLRC.

82. The JPLRC gave public notice that it would welcome any evidence indicating that any limited registration Class B longshoreman who had not met any express promotion standard had been promoted in error. No evidence was submitted to indicate that any such errors had been made.

83. In reaching decisions as to the facts relevant to the explicit promotion standards in the case of each of the limited registration Class B longshoremen—including each of the plaintiffs—and in the application of the explicit promotion standards thereto, the ILWU and its Local 10 provided fair representation to all of the persons in the collective bargaining unit, including each of the plaintiffs. As they provided in the representation of the longshoremen in all matters relevant to this proceeding, the ILWU and its Local 10 provided fair representation to all of the employes in the collective bargaining unit—including each of the limited registration longshoremen and accordingly each of the plaintiffs—in negotiating the explicit promotion standards. In this representation, neither the ILWU nor its Local 10 acted on the basis of any malice, hostility, bad faith, animosity, or ill-will toward any of the persons in the collective bargaining unit, including the plaintiffs as a group and each of them, and neither of the union defendants engaged in any invidious, arbitrary, discriminatory, capricious, irrational or unfair activity in regard thereto.

The adjudication of plaintiffs' grievances.

84. Grievances with respect to the notices of deregistration dated June 17, 1963, were filed by 57 limited registration Class B longshoremen, including all of the plaintiffs except Thomas Nisby and Alfred Straughter.

85. Each of the limited registration Class B longshoremen who had been denied promotion and who had filed a grievance was notified that the hearing on his grievance would be held at Pier 24 in San Francisco on July 9, 10 or 11, 1963.

86. During the period up to the time of each man's individual hearing, the union provided each man with information as to the issues of fact that were significant

to his notice of deregistration, and Asher Harer continued to act as ombudsman-advocate to assist each of these men in regard to his grievance.

87. Each of the plaintiffs who had filed a grievance appeared at Pier 24 before the JPLRC on July 9, 10 or 11, 1963. Each was notified of the reason or reasons that indicated that he had not satisfied some one or more of the explicit promotion standards. Each was given an opportunity to challenge the factual basis for the reason given at a conference with JPLRC representatives. Such conferences with respect to dropping of LMO hours were scheduled to be held at the dispatching hall records office, and the conferences with respect to the time of payment of pro-rata were scheduled to be held at the office of the union where records as to these payments were maintained.

88. During the period from July 16 through July 18, 1963, conferences were held with each of the limited registration Class B longshoremen who wished to have a conference with respect to the factual issues of which they were given notice at their respective hearings on July 9, 10 and 11. Individual representatives of the JPLRC—from both Local 10 and the PMA—met with each individual man and went over the facts in his case with him. With the exception of Frank Nereu, there was no disagreement as to the basic facts. Stanley Weir disagreed with the inference drawn from the evidence. Anthony Melvin disagreed with the decision that certain hours he dropped for a short time were counted against him. Antonio Cafeteiro and Roger Fleeton had a disagreement with the committee as to the ultimate fact to be found on the basis of the evidentiary facts as to flopping on Sundays.

89. James Edwards, a representative of PMA on the JPLRC B-list panel, participated in the conference with Stanley Wier. They went over the evidence in detail. James

Edwards determined that the evidence submitted by Stanley Weir in support of his claim that he did not square off a second time in the week of October 8-15, 1962, was insufficient to overcome the evidence before the JPLRC that he had squared off two times in this week, and James Edwards concluded that Stanley Weir had indeed dropped in excess of 10 LMO hours in violation of the rules and determinations of the JPLRC. The Court credits the testimony of James Edwards that he believed in good faith that Stanley Weir had actually dropped hours on this occasion.

90. As a result of the reviews carried on in these procedures in July, 1963, by the JPLRC, four limited registration Class B longshoremen received decisions setting aside their deregistrations. Twenty-six other limited registration Class B longshoremen obtained modifications in the findings as to the exact facts involved in their cases, but the modifications as to these men were insufficient to establish that the men had satisfied all the explicit promotion standards.

91. On all of the evidence not subject to legal objection, this Court finds that each of the plaintiffs did in fact engage in misconduct of such type and amount as to establish that he failed to satisfy one or more of the explicit promotion standards.

92. The decisions of the JPLRC in July, 1963, were reached through the same adjudicative process as that used by the JPLRC for issues of similar gravity and factual complexity during the period from 1959 to 1963, including issues as to whether or not an individual limited registration Class B longshoreman should be deregistered or should be permitted to continue to work in the industry. This procedure is one it had followed in the past with respect to men who appeared to have failed to satisfy the 70% availability rule and men charged with other contract violations. The

procedure that was followed had developed over the years of collective bargaining in the industry. This was a normal grievance process for this type of issue. The process employed was a reasonable, due, fair and appropriate grievance process for the adjudication of such issues.

93. On July 16, 1963, Local 10 instructed its representatives on the JPLRC to move in the next JPLRC meeting that the deregistrations of the limited registration Class B longshoremen who had failed to meet the explicit promotion standards only because of the dropping of LMO hours or the late payment of pro-rata be permitted to remain on the limited registration Class B list subject to a suspension and that they thereafter be promoted. Such motions were placed before the JPLRC by the Local 10 representatives. A disagreement was reached on the motions. It was the position of the PMA representatives that the JPLRC could not change the explicit promotion standards that had been adopted by the parties and approved by the Joint CLRC and that this issue could be raised only before the Joint CLRC. This disagreement was taken to the Joint Area LRC, where there was agreement that Local 10 could proceed with this issue only before the Joint CLRC.

94. On July 22, 1963, the JPLRC reached agreement as to the merits of each of the grievances filed by the limited registration Class B longshoremen with respect to the notices of deregistration of June 17, 1963, and notices of these decisions were sent to the men who had filed grievances, including those who had been found to have satisfied the explicit promotion standards and those whose grievances were denied.

95. During the process the union took elaborate and detailed efforts to make certain that there would be no factual mistake that would cause the plaintiffs or the other limited registration Class B longshoremen to be denied pro-

motion, and the union defendants became satisfied (a) that the PMA representatives and the JPLRC were similarly engaged in such efforts to be certain that there would be no factual mistake that would cause any of the plaintiffs or other limited registration Class B longshoremen to be denied promotion, and (b) that this effort was carried on jointly by the JPLRC representatives from both the union and the employer in determining the facts as to all of the limited registration Class B longshoremen who had filed grievances.

96. Throughout the proceedings in adjudication of the grievances filed by plaintiffs and other limited registration Class B longshoremen regarding the June 17 notices of deregistration, the ILWU and its Local 10 provided all of the longshoremen in its collective bargaining unit, including each of the plaintiffs, with fair representation. As they provided in their representation of the longshoremen in all matters relevant to this proceeding, the ILWU and its Local 10 provided fair representation to all of the employes in the collective bargaining unit—including each of the limited registration longshoremen and accordingly each of the plaintiffs—in negotiating the explicit promotion standards. In this representation, neither the ILWU nor its Local 10 acted on the basis of any malice, hostility, bad faith, animosity, or ill-will toward any of the persons in the collective bargaining unit, including the plaintiffs as a group and each of them, and neither of the union defendants engaged in any invidious, arbitrary, discriminatory, capricious, irrational or unfair activity in regard thereto.

The § 17.4 grievance procedure.

97. Each of the plaintiffs and the other limited registration Class B longshoremen whose deregistrations were sustained in July, 1963, was notified that he could use the

§ 17.4 procedure of the PCLA by filing a discrimination grievance, which would institute a collateral attack upon the decision sustaining his deregistration, which collateral attack could be carried to the Coast Arbitrator by the individual man, who would have complete control of his own case in this procedure.

98. On July 25, 1963, Johnson Lee, one of the limited registration Class B longshoremen whose grievance against his deregistration was denied on July 22, 1963, filed a charge with the National Labor Relations Board.

99. On or about July 26, 1963, most of the plaintiffs and some other limited registration Class B longshoremen whose deregistrations had been sustained met and determined to file grievances under the § 17.4 procedure, and Stanley Weir prepared a form to state such a grievance and distributed it to the plaintiffs and other limited registration Class B longshoremen. It stated [Ex. 427]:

> "Your committee de-registered me on June 17. On July 24, I received your letter denying my hearing appeal. In so doing you consummated an action that is discriminatory. You have not judged all the men involved by the same standards.
>
> "I appeal your decision and request another hearing as stipulated, where I will prove and document this discrimination.
>
> "I have never been able to get from you an official statement specifying the alleged charges against me, nor did your committee produce documents to substantiate the charges.
>
> "Would you please correct this situation for the next hearing."

On July 27, 1963, most of the plaintiffs filed a discrimination grievance in these precise words.

100. On or about July 27, 1963, the plaintiffs considered the advisability of filing charges with the National Labor Relations Board.

101. During the period beginning July 25, 1963, the great bulk of the plaintiffs filed appeals from decisions denying them unemployment insurance benefits or had unployment insurance benefit decisions favorable to them appealed by PMA.

102. On August 1, 1963, Stanley Weir filed his appeal against the denial of unemployment insurance benefits to him. It stated [Ex. IV]:

> "The reason for your decision is based upon information that I have not had any opportunity to confront or refute. At no time has the union or the employer presented a documentation of L.M.O. charges when both myself and anyone with power to find me guilty or innocent was present. (Local 10, I.L.W.U. is for returning even guilty LMO violators to work). (This, as of July 27, 1963)
>
> "I request my case be consolidated into the group appeal and that during the appeal and at the hearing the charges against me be complete, specific and completely documented so that I can finally have an opportunity to make my defense."

103. On or before August 3, 1963, the plaintiffs agreed not to carry their case to the National Labor Relations Board but instead to take it to the courts. They held a press conference and publicly announced their decision. This news was broadcast by radio and television and reported prominently in the San Francisco newspapers.

104. On or about August 15, 1963, the plaintiffs sent the telegram to Local 10, threatening it by stating that they would go to court if Local 10 did not get plaintiffs their "jobs back".

105. Plaintiffs knew that the announcement of their decision to go to court would cause a strong negative reaction among the members of Local 10 and officials of the ILWU.

106. On or about September 1, 1963, the plaintiffs retained Sidney Gordon as their attorney "to get their jobs back". The initial task he took on was to handle their unemployment insurance litigation.

107. Extensive litigation was instituted by Sidney Gordon before the unemployment insurance referee, the appeals board, the California Superior Court, the California District Court of Appeal, and the California Supreme Court with respect to the unemployment insurance issues raised by plaintiffs so that months of time were devoted to these proceedings. During these proceedings, oral notice was given to the plaintiffs through their then attorney, Sidney Gordon, that the JPLRC had determined that the § 17.4 grievance procedure would be carried forward as soon as the transcript of the unemployment insurance hearings was available. The taking of evidence before the referee was concluded on April 1, 1964.

108. Because of the time involved in this unemployment insurance litigation that was carried on at length in accordance with the demand of Stanley Weir and because of the desirability of not duplicating the taking of live testimony, the delay in proceeding to the actual grievance hearings was reasonable and necessary.

109. On April 15, 1964, plaintiffs filed their complaint in this matter in which they alleged that they had already exhausted the grievance-arbitration procedure in July, 1963, and prayed that the use of the grievance procedure be enjoined.

110. On May 18, 1964, notices were sent to the plaintiffs who had filed discrimination grievances, notifying them

that their grievances were being sent down for a hearing under the § 17.4 procedure of the PCLA.

111. On May 22, 1964, Sidney Gordon, counsel for the plaintiffs, wrote to George R. Andersen, counsel for the defendant unions, saying [Ex. LS]:

> "Please be advised that I have instructed my clients in the above-entitled matter [*Williams* v. *PMA*], and those persons I represent in the subject controversy, not to be present pursuant to those Notices respecting re-hearing on their deregistrations which are set to commence next week.
>
> "Our position is that all matters of Discovery are within the exclusive jurisdiction of the Court, further, that the extra-judicial steps now attempted, and, without provision for representation by counsel of Record, subsequent to commencement of the action, and with respect to the very issues of law and fact advanced by the complaint, in particular, before a Committee, whose members are individually sued, is, clearly, a usurpation of the province of the Court."

112. On May 25, 1964, George R. Andersen responded to the foregoing communication he acknowledged receiving from Sidney Gordon, saying [Ex. LT]:

> "For your general information, the grievance hearing which is scheduled is pursuant to the grievance/arbitration machinery set forth in the longshore contract, which machinery provides in effect that this procedure is the sole and exclusive remedy in the event grievances arise of the nature covered by what we believe to be the claims of your clients.
>
> "In other words, the contract provides for arbitration; and we suggest to you that if you have a cause of action, you may be seriously jeopardizing it by refusing to follow the arbitration procedure.
>
> "I suggest you let us know by return mail if you are refusing to arbitrate, or whether your clients will appear."

113. On May 25, 1964—the day preceding the first of these § 17.4 grievance hearings—Sidney Gordon, counsel for the plaintiffs, appeared *ex parte* in this case in this Court without notice to the defendants and obtained a temporary restraining order against the holding of the § 17.4 grievance procedure hearings on the plaintiffs' grievances. This temporary restraining order was served shortly after the proceedings began. Upon service of the temporary restraining order, the proceedings then recessed.

114. A hearing was thereafter held in this case in this Court before Judge Albert C. Wollenberg on June 2, 1964, on plaintiffs' request for a preliminary injunction to prohibit the JPLRC from carrying on the grievance procedure under § 17.4.

115. During the hearing before Judge Wollenberg, counsel for PMA and counsel for the ILWU and Local 10 confirmed, and represented to the Court and to counsel for plaintiffs, that the ILWU-PMA contract provided a grievance procedure for issues raised by the plaintiffs, that plaintiffs were entitled to participate therein using their own counsel and with full control of their cases, and that this would lead to an arbitration before Professor Kagel of Boalt Hall Law School of the University of California with respect to claims raised by the plaintiffs. When Judge Wollenberg indicated that the injunction prayed for would not issue, Sidney Gordon nevertheless declared that he would not participate and would not permit the plaintiffs to participate in these grievance procedures. Judge Wollenberg then advised Sidney Gordon of the law as to the exhaustion of the grievance-arbitration process, pointed out he would be taking a severe risk for his clients if he failed to exhaust the available grievance-arbitration procedures under the collective bargaining contract, directed defendants to communicate with Sidney Gordon at all steps of this procedure as counsel for the plaintiffs, and had

Sidney Gordon give the defendants an address that could be used for such communications.

116. Thereafter, the JPLRC carried on its proceedings under § 17.4 with respect to the discrimination grievances filed by plaintiffs and reached decisions thereon. Notices of these decisions were given to Sidney Gordon and to each of the plaintiffs; each was (in the notice documents) informed of the procedure by which an appeal to the next step of the grievance procedure could be taken.

117. Thereafter, Sidney Gordon, on behalf of the plaintiffs, brought plaintiffs' grievances to the Joint CLRC.

118. On November 20, 1964, after Sidney Gordon and counsel for the PMA and counsel for the ILWU were given the opportunity to file briefs with respect to the issues, the Joint CLRC held its hearing on the appeals. Sidney Gordon did not make a personal appearance. One of the plaintiffs, Cleo Love, appeared at the hearing. He admitted that he had in fact not met the explicit promotion standards and asserted that these standards were contrary to the contract and should be rescinded.

119. The minutes of the Joint CLRC meeting on November 20, 1964, show that the following issues were considered by the committee at that time:

> The Joint CLRC held that the explicit promotion standards did not establish any new rules or penalties, that they were adopted in full satisfaction of all contract requirements, that they were applied uniformly to all applicants for promotion, that no person was promoted who failed to satisfy any of the explicit promotion standards, that each of plaintiffs did in fact fail to satisfy one or more of the explicit promotion standards, that the explicit promotion standards were material and relevant to upgrading the longshore work force, that this purpose was reasonable, rational and

appropriate, that the explicit promotion standards were not in violation of any terms of the collective bargaining contract, that the explicit promotion standards were not retroactive or retrospective in effect, and, further, that neither in negotiating the explicit promotion standards nor in adjudicating grievances in regard thereto did the International ILWU or Local 10 engage in any discrimination either in favor of or against any person because of membership or nonmembership in the union, activity for or against the union or absence thereof, or race, creed, color, national origin or religious or political beliefs.

Each of the plaintiffs was entitled to take to the Coast Arbitrator his appeal from the decision of the Joint CLRC on November 20, 1964.

120. The explicit promotion standards, and the form of the letter used to notify the plaintiffs of their deregistration under date of June 17, 1963, were duly approved by the final action of the Joint CLRC on November 20, 1964, where express approval was given to the explicit promotion standards, both with respect to their substance and to the formalities of their adoption. They had previously been duly approved by the Joint CLRC by its informal action prior to July 17 (under which the July 17 notices were issued) and by the Joint CLRC's formal action of June 24, 1963, approving the explicit promotion standards and the application thereof as a general course of action in exercising its control over the registration lists for the port of San Francisco.

121. During the proceedings before Judge Wollenberg on June 2, 1964, Judge Wollenberg had advised Sidney Gordon that the case would be kept open in the files of the Court and that Sidney Gordon could have prompt access to this Court should the defendants fail to pro-

vide due, fair, reasonable and appropriate hearings in the grievance-arbitration process to the plaintiffs in accordance with the commitments that their counsel had made in this Court. Thereafter, Judge Wollenberg's directions that notice be given to plaintiffs, and their counsel, Sidney Gordon, of all subsequent steps in the grievance-arbitration process were followed. No contention was made in this case in this Court that the grievance-arbitration procedures carried on by the defendants were not in accordance with the assurances given to Sidney Gordon to Judge Wollenberg.

122. Under date of December 18, 1964, each of the plaintiffs and Sidney Gordon was given notice of the Joint CLRC decision. The notice set forth details as to the procedure to be used to take the matter to arbitration before the Coast Arbitrator and the time limits thereon.

123. Each of the plaintiffs had the right to continue to use the § 17.4 procedure with respect to his grievance by filing an appeal from this decision of the Joint CLRC to the Coast Arbitrator. In following such procedure, the individuals had full control of their respective cases in perfecting their appeals, in subpoenaing witnesses and documents, in presenting their evidence, and in arguing their contentions. They were free to appear individually or as a group and to have individual or group counsel represent them.

124. In the course of the grievance procedures up through the notices issued on December 18, 1964, the ILWU and its Local 10 provided fair representation to all of the employes in the collective bargaining unit, including each of the limited registration longshoremen and accordingly each of the plaintiffs. In this representation, neither the ILWU nor its Local 10 acted on the basis of any malice, hostility, bad faith, animosity, or ill-will toward any of the persons in the collective bargaining unit, including the

plaintiffs as a group and each of them, and neither of the union defendants engaged in any invidious, arbitary, discriminatory, capricious, irrational or unfair activity in regard thereto.

125. On May 4, 1965, the trial examiner of the National Labor Relations Board issued his intermediate report in which he stated his conclusion that the explicit promotion standards were adopted through breach of the duty of fair representation, citing *Miranda Fuel Company, Inc.,* 140 NLRB 181 (1962). On May 17, 1965, the plaintiffs, on behalf of all persons similarly situated, filed a charge with the Labor Board asserting that they had been deregistered as a result of the breach of the duty of fair representation as decided by the trial examiner. They asserted they had exhausted their remedies under the grievance machinery procedure of the contract in November, 1964. General Counsel of the Labor Board, apparently on the theory that the period of limitations under the National Labor Relations Board ran from an earlier act of the JPLRC and had expired or on the basis of his discretion not to proceed with a charge filed with the Labor Board, refused to permit these plaintiffs to join in the contentions made by Johnson Lee and the other limited registration Class B longshoremen who had filed charges in 1963.

126. The Board issued its decision in *Pacific Maritime Association (Johnson Lee),* on November 29, 1965, which is reported at 155 NLRB 1231 (1965). Its decision was contrary to that proposed by the trial examiner. It concluded that the explicit promotion standards had been adopted to meet "the industry's increasing need for a greater number of steady, highly qualified and responsible longshoremen by affording fully registered status to the most qualified of the limited registered longshoremen and abolishing the Class B list". It sustained the use of the

late payment of pro-rata as an explicit promotion standard, the decision that those who failed to meet the explicit promotion standards would be deregistered, and the existence of the Class B limited registration list of men who would be subject to stricter rules and more stringent penalties than the Class A longshoremen.

The plaintiffs' procedural complaints.

127. On or about March 28, 1963, Stanley Weir received notice that he had been deregistered because certain data in the hands of the JPLRC indicated that he had failed to meet the 70% availability test. Upon receipt of this notice, he went to the Local 10 office to get information as to what was the basis for the charge that he had failed to meet this test. He was then given assistance by officials of Local 10 to determine what was involved. Local 10 communicated on his behalf with the Pacific Maritime Association and got information as to the period of time involved. Thereupon, Stanley Weir himself went to the PMA office and talked to PMA representatives on the Class B panel of the JPLRC and got information from them as to the period of time over which it was asserted he had failed to meet the 70% availability standard and as to the exact details of how that standard was applied. Thereupon Local 10 had discussions of his case with PMA and wrote Stanley Weir telling him that should appear at the hearing and present the facts and indicating that, in view of the information developed, it appeared that he would be successful in getting the deregistration stricken from his record.

128. On April 24, 1963, Stanley Weir did appear before the JPLRC and did present facts as to the period of time that was under consideration by the JPLRC on the basis of data it had developed. It apeared that his actual availability had been between 69% and 70% in one thirty-day

period and that his sunburned condition after his vacation made him unable to perform longshore work for some days, so that his record showed that he fell below 70% availability. Upon Stanley Weir's presentation to the JPLRC, it reversed the deregistration.

129. In May, 1963, Stanley Weir learned that the JPLRC was apparently considering whether or not he had dropped an excessive number of LMO hours and whether or not he would be promoted to the coveted seniority status of the Class A fully registered longshoreman. He thereupon started a series of written communications to the PMA, to the ILWU and to Local 10, asserting that he had not dropped an excessive number of LMO hours and protesting the procedures being used.

130. On May 14, 1963, Stanley Weir sent a telegram to William Chester at the ILWU and John Trupp at the PMA.

131. Either before or shortly after Stanley Weir's first such written communication to PMA and the ILWU on this subject, he had met with Asher Harer, who was acting as ombudsman-advocate for the limited registration Class B men who were in situations similar to that of Stanley Weir. The two reviewed in detail the issues that had been raised on this subject. Thereafter, on May 16, 1963, Asher Harer reported to the Local 10 membership that he had studied a number of cases, including that of Stanley Weir, and that he disagreed with the conclusions of the union representatives on the B-list panel of the JPLRC that Stanley Weir had dropped an excessive number of LMO hours.

132. As a result of the questions raised by Stanley Weir directly and by Asher Harer and others, Local 10 directed that its representatives on the B-list panel of the JPLRC make a double check as to every man who appeared to have dropped an excessive number of LMO hours to make certain that no man was denied promotion because of an

erroneous decision as to the facts involved. Thereafter, such double checks were made by the union representatives on the JPLRC.

133. At the same time the employer representatives on the JPLRC made independent checks with respect to every man who was initially determined to have dropped an excessive number of LMO hours. This was to avoid any factual errors. By early June these reviews had been completed and changes made in the records as to the dropping of LMO hours. Adjustments were made for errors that were found.

134. On May 14, 1963, Stanley Weir objected to the promotion of some of the limited registration Class B longshoremen prior to the JPLRC's issuing a determination in his favor with respect to his case. He said he should be promoted, that he could show that he had not dropped an excessive number of LMO hours, and that he should be promoted with the others who had been found to have met the explicit promotion standards and at the same time.

135. On May 17, 1963, the Joint CLRC set aside the action of the JPLRC that had promoted 408 limited registration Class B men to the status of a fully registered Class A longshoreman and directed that the JPLRC make initial determinations as to all of the applications and then promote, at the same time, all of the men who met the explicit promotion standards.

136. On June 10, 1963, Stanley Weir made a further written challenge to the procedure and to the JPLRC conclusions for a determination sustaining the earlier findings that he had dropped an excessive number of hours. His letter to this effect of June 10, 1963, was on or shortly after the date on which the JPLRC members informally concluded that he had dropped an excessive number of LMO hours after having concluded its double check process.

137. The JPLRC gave notice in the minutes of June 17, 1963, which were made public to the longshoremen, asking that facts be submitted to it that might indicate that any limited registration Class B longshoreman had been approved for promotion although he had failed to meet one or more of the explicit promotion standards. It stated that any such promotion would be set aside on establishing such facts.

138. After Stanley Weir received his notice of deregistration under date of June 17, 1963, he continued to send written communications to the union and to the PMA asserting that he was without knowledge as to the issues that were involved in his case and so was not able to prepare his case. This Court finds that Stanley Weir, previous to these communications, had reviewed these issues in detail with Asher Harer and that Asher Harer had prepared detailed documentary material to support Stanley Weir's contentions that he had not dropped an excessive number of LMO hours. When Stanley Weir appeared before the JPLRC at Pier 24 on July 11, 1963, he gave full explanations of why he should not be charged with dropping any LMO hours, except for 2½ hours, and the report of Asher Harer with respect to his case was read to the JPLRC. Stanley Weir's oral presentation and the Asher Harer report were substantially the same.

139. The evidence in this record fails to show that Stanley Weir was in any way prejudiced in the preparation and presentation of his evidence and his argument in support of his grievances. He, like all the other plaintiffs, had full opportunity to learn of the factual issues that led to the notice of June 17, 1963, that he had been deregistered, to gather his evidence, to marshall his facts, to present his argument, and he had the benefit of the extraordinary assistance of Asher Harer in preparing his case for the grievance-arbitration process. There is no showing of any

merit in the technical claims of insufficiencies in the procedures used under the ILWU-PMA contract. Stanley Weir had a due, fair, appropriate and reasonable hearing.

140. Evidence was offered that there was rumor or gossip on the San Francisco waterfront that Stanley Weir had been selected for deregistration by the ILWU and the PMA because he was a thorn in the side of Harry Bridges, then president of the ILWU, and Paul St. Sure, then president of the PMA. Evidence was offered through deposition testimony from the president of Local 13 of the ILWU in Los Angeles, Curt Johnston, that this rumor had been told to him by a PMA employe in Los Angeles, Robert Hall. However, Robert Hall testified in the Court and denied that he had ever made such a statement to Curt Johnston. The Court credits the testimony of Robert Hall and finds that he did not relate this rumor or gossip to Curt Johnston. The Court notes that Stanley Weir testified that this rumor stated a hypothesis that he felt could be drawn from the evidence, but he testified further that this was not his conclusion from the evidence. From all of the evidence in the record not subject to legal objection, the Court finds (a) that there is not proof in this record that Stanley Weir was considered to be a thorn in the side of Harry Bridges by Harry Bridges or Paul St. Sure or by any agent of the ILWU, Local 10 or the PMA, or that Stanley Weir was considered to be a thorn in the side of Paul St. Sure by Paul St. Sure or Harry Bridges or by any representative of the ILWU, Local 10 or the PMA, and (b) that it has not been established that any invidious or arbitrary or discriminatory considerations or any hostility, animosity, malice, ill-will, invidiousness, bad faith, or "frame-up" contributed in any way to the decision that Stanley Weir stand deregistered or to the decision that any of the other plaintiffs or the plaintiffs as a group or the limited registration longshoremen who were deregistered as a group, were

deregistered for such reasons. It finds to the contrary, that Stanley Weir and each of the other plaintiffs was deregistered for good and sufficient cause.

141. In their Fourth Amended Complaint, plaintiffs alleged that they had exhausted all appeals and had "been totally deregistered by a final decision made by the Joint Coast Labor Relations Committee on November 20, 1964". The Court finds that the ILWU-PMA contract gave Stanley Weir and each of the plaintiffs or any group of two or more or all of the plaintiffs a remedy before the Coast Arbitrator by appeal with respect to all of the issues decided by the Joint Coast Labor Relations Committee on November 20, 1964, and that they and each of them refused to use this remedy.

Except as found hereinabove, this Court specifically finds on all the evidence not subject to legal objection that plaintiffs have failed to establish each and every of their allegations in their Fourth Amended Complaint.

From the foregoing Findings of Fact the Court draws the following

CONCLUSIONS OF LAW

1. This Court has jurisdiction of the parties and the subject matter of this action under § 301(a) of the Labor-Management Relations Act, 29 U.S.C. § 185, and 28 U.S.C. § 1337.

2. Defendant Pacific Maritime Association is an employer within the meaning of § 2(2) of the Act, 29 U.S.C. § 152(2). Defendant International Longshoremen's and Warehousemen's Union is the certified collective bargaining representative for all longshoremen employed by PMA and is recognized as such under § 2(5) of the Act. 29 U.S.C. § 152(5). Defendant International Longshoremen's and

Warehousemen's Union Local No. 10 is the chartered local affiliate of the International in the Port of San Francisco.

3. Plaintiffs have standing to bring this action.

4. At all times relevant to this case, the ILWU and the PMA were parties to the ILWU-PMA collective bargaining contract.

5. As the certified collective bargaining representative, defendant International Longshoremen's and Warehousemen's Union owed to all persons in the bargaining unit—and to the plaintiffs at all time material to their claims—a statutory duty of fair representation to represent all members of the bargaining unit fairly and to refrain from arbitrary, discriminatory or bad faith conduct.

6. The exclusive representative for collective bargaining purposes of employes in a collective bargaining unit has no duty to try to assist an individual employe in covering up the true facts with respect to an issue involving him that is being considered in the grievance-arbitration process.

7. The explicit promotion standards were authorized by, and adopted in accordance with, § 17.851 of the Pacific Coast Longshore Agreement, a basic contract document of the ILWU-PMA collective bargaining contract, were duly and properly adopted by the parties to the ILWU-PMA collective bargaining contract, and became part of that contract as an explication of the terms of the 1958 Memorandum as to Registration and Deregistration, another part of that contract.

8. The ILWU and its Local 10 provided fair representation to the members of the bargaining unit in the negotiation of the explicit promotion standards. These negotiations were carried on without breach of the duty of fair representation and without malice or hostility or animosity, ill-

will or bad faith and without any arbitrary, unreasonable, invidious, discriminatory or bad faith conduct.

9. The provisions of the explicit promotion standards were fair, reasonable, rational and relevant terms dealing with misconduct that was known to be misconduct for which deregistration might be the penalty at the time that the individual limited registration longshoreman engaged in misconduct. The terms of the explicit promotion standards are fair and not capricious or abritrary.

10. The true purpose or real motivation of the parties to the ILWU-PMA contract in formalizing the explicit promotion standards and in implementing them was to meet the industry's increasing need for a greater number of steady, highly qualified, and responsible longshoremen. To that end, the defendants jointly promulgated appropriate, fair and reasonable guides for the selection of the best-qualified employes.

11. The ILWU and its Local 10 provided fair representation to the members of the bargaining unit in the implementation of the explicit promotion standards. The implementation of these standards was carried on without breach of the duty of fair representation and without malice or hostility or animosity or ill-will or bad faith and without any arbitrary, unreasonable, invidious, discriminatory or bad faith conduct.

12. The employer owes no duty of fair representation to the employes working for it or in the collective bargaining unit of which its employes are members or any of them. The employer is not liable to its employes for the consequences of its engaging in hard bargaining with the union in an effort to get a bargaining contract that is for the employer's best interests or in implementing that contract.

13. The procedures for handling the grievances of the plaintiffs were fair, due, appropriate and reasonable for the

disposition of the issues in the grievance-arbitration process with respect to the deregistration notices sent to the plaintiffs.

14. The ILWU and its Local 10 provided fair representation to the members of the bargaining unit in the adjudication of the grievances of the plaintiffs with respect to the explicit promotion standards and their implementation. These grievances were adjudicated without breach of the duty of fair representation and without malice or hostility or animosity or ill-will or bad faith and without any arbitrary, unreasonable, invidious, discriminatory or bad faith conduct.

15. The plaintiffs are not entitled to relief in this Court with respect to their deregistration because they failed and refused to exhaust the grievance-arbitration procedure of the ILWU-PMA contract, which they could have exhausted by taking their grievances to the Coast Arbitrator after receiving the notices of the decision of the Coast Labor Relations Committee on November 20, 1964, which were dated December 18, 1964.

16. The grievances of the plaintiffs claiming that they did in fact satisfy the explicit promotion standards were not meritorious grievances.

17. The ILWU and the PMA are authorized under the law, and under the ILWU-PMA collective bargaining contract, to maintain the distinctions existing between limited registration Class B longshoremen having junior seniority and fully registered Class A longshoremen with a superior seniority status.

18. Neither the ILWU nor its Local 10 was in breach of the duty of fair representation in failing to obtain agreement by the PMA to strike out of the ILWU-PMA contract any of the provisions for registration status that had been

in effect since 1934, or that were adopted prior to December 31, 1964.

19. The dissatisfaction of the plaintiffs with the explicit promotion standards did not establish that there was a breach of the duty of fair representation.

20. Judgment is to be rendered in favor of defendants and against plaintiffs, with costs to the defendants.

Dated: August 27, 1976

/s/ GEORGE B. HARRIS,

United States District Judge

Appendix D

In the United States District Court
For the Northern District of California

Civil No. 42284 GBH

George B. Williams, et al.,
Plaintiffs,

vs.

Pacific Maritime Association, et al.,
Defendants.

[Filed October 27, 1976]

JUDGMENT

This cause came on regularly for trial before the Court sitting without jury, on January 14, 1974, and continued with the taking of live testimony until July 3, 1974.

The plaintiffs were represented by Arthur Brunwasser, Esq., and Fred Kurlander, Esq., Defendant Pacific Maritime Association was represented by Richard Ernst, Esq., Dennis Daniels, Esq., and Kendall De Bevoise, Esq., of the firm of Ernst & Daniels. Defendants International Longshoremen's & Warehousemen's Union and ILWU Local 10 were represented by Richard Gladstein, Esq., and Norman Leonard, Esq., of the firm Gladstein, Leonard, Patsey & Andersen.

The trial was bifurcated, and this first stage was concerned with the issue of liability only. Oral and documentary evidence was introduced by and on behalf of each of the parties. Thereafter, counsel for all parties prepared a written Stipulation as to Testimony which was filed on

February 28, 1975. Subsequently, further documentary material was incorporated into the record.

After all parties had rested, the parties filed their post-trial briefs and proposed Findings of Fact and Conclusions of Law, and the cause was then submitted to the Court for decision.

The Court has considered all the evidence and testimony adduced at the trial and in the Stipulation and has studied the briefs of counsel.

The Court has heretofore filed its Findings of Fact and Conclusions of Law herein. Said Findings of Fact and Conclusions of Law were thereafter amended in immaterial particulars in order to correct certain clerical errors, which were discovered therein subsequent to their filing. These Findings of Fact and Conclusions of Law as amended are by this reference incorporated into this Judgment at this point as though they were fully set forth here.

Based upon the foregoing, it is hereby Ordered, Adjudged and Decreed that judgment is entered in favor of defendants and against plaintiffs and that the action is dismissed upon the merits. Costs are awarded to the defendants against the plaintiffs upon the filing of a cost bill pursuant to the appropriate statutes and rules.

Dated: October 27, 1976

GEORGE B. HARRIS

Judge of the
United States District Court

Appendix E

Statutory Provisions Involved

Section 7 of the National Labor Relations Act, 49 Stat. 452 (1935), as amended, 29 U.S.C. § 157 (1958), provides:

"Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8(a)(3)."

Section 8 of the National Labor Relations Act, as amended, 61 Stat. 140 (1947), 29 U.S.C. § 158 (1958), provides, in pertinent part:

"(a) It shall be an unfair labor practice for an employer—

(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 157 of this title;

• • •

"(b) It shall be an unfair labor practice for a labor organization or its agents—

"(1) To restrain or coerce (A) employees in the exercise of the rights guaranteed in section 7: . . .

• • •

"(3) to refuse to bargain collectively with the employer, provided it is the representative of the employees subject to the provisions of section 9(a); . . ."

• • •

"(d) For the purposes of this section, to bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, . . ."

Section 9(a) of the National Labor Relations Act, 61 Stat. 143 (1935), as amended, 29 U.S.C. § 159(a) (1958), provides:

"Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: Provided, That any individual employee or a group of employees shall have the right at any time to present grievances to their employer and to have such grievances adjusted, without the intervention of the bargaining representative, as long as the adjustment is not inconsistent with the terms of a collective-bargaining contract or agreement then in effect: Provided further, That the bargaining representative has been given opportunity to be present at such adjustment."

Section 10(a) of the National Labor Relations Act, 49 Stat. 453 (1935), as amended, 29 U.S.C. § 160(a) (1958), provides:

"The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. This power shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law or otherwise. Provided, That the Board is empowered by agreement with any agency of any State or Territory to cede to such agency jurisdiction over any cases in any industry

(other than mining, manufacturing, communications, and transportation except where predominantly local in character) even though such cases may involve labor disputes affecting commerce, unless the provision of the State or Territorial statute applicable to the determination of such cases by such agency is inconsistent with the corresponding provision of this Act or has received a construction inconsistent therewith."

Section 301(a) of the Labor-Management Relations Act, 1947, 61 Stat. 156, 29 U.S.C. § 185, provides:

"Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this Act, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties."

Appendix F

(Exhibit N)

I.L.W.U. Local 10
Minutes of "B" Men Meeting
Friday, July 10, 1959
301 Beach Street

Meeting convened at 7 P.M.
Vice-Pres. R. Rohatch, presiding.
Officials in Attendance:
H. Bridges, Int'l. Pres.
Wm. Chester, Reg. Dir.
Geo. Walsh, Temp. Secretary

A. James
Frank Stout
T. Silas
— Loc. 10 Bus. Agents

ALLEGIANCE to the flag pledged.

Vice-President Rohatch introduced International President Bridges.

Brother Bridges informed the "B" men that rules and regulations governing the work in the industry have been drawn up to protect the men already working in the industry and at the same time protect new men coming into the industry.

The Union is duty bound to protect all men working in the industry. Brother Bridges pointed out that the manpower needs of the industry will be determined by the amount of cargo going on and off the docks and ships. He reminded the "B" men that "A" men will be given first crack at work available. What work remains unfilled by "A" men will be given to "B" men.

"Most industries", Brother Bridges said, have "apprentice" periods of employment for new men and almost always at a lower pay scale. In this industry a new man on entering the industry receives the same rate of pay as men who have long seniority in the industry.

The policy of the International is to develop a program whereby every man in the industry whether he be an "A" man or "B" man gets sufficient work opportunities. Brother Bridges emphasized that the Union expects strict observance of all rules. Repeative and frequent violations of rules will make it more difficult for a "B" man to advance to the "A" list.

Brother Bridges concluded by saying that this is a Union where the rank and file get more protection—more security and more voice in the industry.

Chief Dispatcher Mike Samaduroff — Brother Samaduroff read to the "B" men a list of rules and regulations (copy attached to Minutes.)

Following Brother Samaduroff's report, questions were asked by "B" men concerning meaning and application of rules.

Brother Chester reminded the "B" men that rules and regulations and further additions to the "B" List will be determined by the Men on the "A" Registration List.

Business Agent Frank Stout addressed the meeting and stated that "B" men when dispatched as a "swing" man are not considered as a gang member and therefore do not relieve the "hook-on" men. This rule also covers "A" men. When a "B" man is dispatched to a gang then he shall relieve under the hook (on a long-gang operation).

Brother Stout also cautioned "B" men on pilfering rules which provide that a "B" man caught pilfering will be removed from the industry. He stated that no "B" man can remain on the job during an overtime day.

Business Agent T. Silas stated that whenever a "B" man feels that work is being performed in violation of the contract or safety rules and no regular steward is available, then he should call the Union Officers and request a Business Agent. He reminded the "B" men that any man fighting in the Hiring Hall may result in removal from the "B" List.

WELFARE PLAN

Local 10 Officers have received no information to date on what progress has been made to include "B" men under the general Welfare plan.

COAST GUARD PASSES

The Union Officers advised "B" men to consult the Union Attorney if they encounter difficulty in securing their Coast Guard Passes.

Brother William Chester, Regional Director, congratulated "B" men for excellent attendance at the July 5th parade. He hoped that the men now on the "B" List will all be "A" men in the near future. The elevation from the "B" List to the "A" List can only be determined by the future development in the industry.

Brother Chester proposed to the "B" men:

That "B" men shall pay $1.00 for the month of June and $1.00 for the month of July for their share in paying for the costs of Coast Negotiations. Such payment shall be in addition to their regular monthly payment.

M/S/C TO ACCEPT PROPOSAL AS SUBMITTED BY BROTHER CHESTER.

Standing vote was unanimous.

Meeting adjourned at 9:20 P.M.

Respectfully submitted,

GEORGE WALSH,
Secretary Pro Tem

GW:jo
opw34cio

Meeting No. 29-A—1959

Minutes of Special Meeting of the
Longshore Labor Relations Committee
of San Francisco

June 17, 1959

Committee met at 2:00 P.M. at 16 California Street.
Present:

For Employers	For ILWU, Local 10
J. R. Snyder, Secty.	W. Chester
J. Trupp	C. Hoffman
J. Edwards	G. Pickering
	R. Rohatch

This was a meeting of the special Labor Relations Committee working on the Class "B" registration.

Committee discussed the dispatching rules governing Class "B" men and felt that certain rules should be clarified to the men as follows:

1. Class "B" men are not permitted to volunteer or to choose jobs, but must take the jobs handed or assigned to them at the dispatching windows.

2. Men who refuse or flop jobs or fail to show on the job, cannot work on the same day or night shift for which they refused or flopped, and must add 6 hours to their accumulated low-man-out sign-in hours.

3. Class "B" men must work or be available 70% of each 30-day period.

(a) Class "B" men must appear before the Longshore Labor Relations Committee to obtain leaves of absence for periods of time exceeding two weeks.

4. If a man is dispatched in error, or there is an over-dispatch of men to a job, such men will sign in at the same hours on which they were originally dispatched, provided

they did not receive other work or pay on that shift. (Class "B" dispatch slips will not be signed or ok'ed for another job for the following shift.)

Disciplinary Action for Class "B" Men

The following rules apply to Class "B" men:

1. Guilty of pilferage: Automatic deregistration

2. Guilty of smoking on the job in unauthorized places: Same penalties as Class "A"

3. Guilty of intoxication:

First offense—30 days
Second offense—Mandatory de-registration

4. Guilty of assault or battery, or doing bodily harm:

Automatic suspension and de-registration

5. Misconduct in the Hall or refusal to work as directed; refusal to take orders; leaving the job without authorization; creating disturbances; fighting or assault; or general improper attitude, including arriving late on the job or leaving the job early:

Severe disciplinary action, depending on severity of offense and number of previous offenses, by the Labor Relations Committee. Such action to count against the individual when consideration is given to promotion to Class "A" registration.

6. Failure to show on the job or replace himself:

Two weeks suspension (first offense).

7. No work or availability for 30 days without bona fide leave of absence:

Automatic de-registration.

Instructions to the Chief Dispatcher

1. A daily record of individuals who refuse a job or flop is to be kept for the Labor Relations Committee.

2. When "B" men are needed on nights they shall be taken in groups starting at the top of the list. The number to be established by the LRC. The men to be rotated every 30 days.

3. The Chief Dispatcher shall keep a record of the men who show an improper attitude or misbehavior to the dispatchers; such record to be passed on to the Labor Relations Committee.

4. Dispatchers are instructed to follow all LRC rules of dispatch regarding Class "B" men.

Meeting adjourned at 4:30 P.M.

Approved July 2, 1959.

/s/ George Pickering /s/ J. R. Snyder

San Francisco Port Labor Relations Committee Rules and Regulations Governing Low-Man-Out System of Dispatch for Individual Longshoremen

In the dispatching of men to longshore work fully registered men (Class "A") shall have preference; limited registration men (Class "B") shall have second preference in accordance with LMO Rule 13 (a). No casual worker shall be sent out when there is any man on the registered list (Class "A") or on the limited registration list (Class "B") qualified, ready, available and willing to do the work.

1. Hours worked start at zero (0) and shall be computed on accumulated actual hours time basis. Banana time to be omitted. Hours will revert to zero (0) the first Monday of each payroll quarter.

2. All traveling time to be counted in computing hours worked.

3. No registered man shall be dispatched from the Hall unless he is first signed in on the proper "sign-in" sheet.

4. DAY WORK: To be eligible for the first morning dispatch longshoremen must sign in a category on the day list by 7:30 p.m. the night previous. After 7:30 p.m. and until 7:00 a.m. the following morning, men may sign in and will be dispatched after the first morning list has been exhausted. After 7:00 a.m. men may sign in on what will be known as the late list. Men will be called from this list if needed. All men not dispatched including men on the late list will be carried over for the following day.

SUNDAY AND HOLIDAY SIGN-INS FOR DAY WORK: When the dispatching hall is open on Sunday and Holiday schedule, longshoremen may sign-in up until 8:30 a.m. for the first morning dispatch on the following day. They may continue to sign-in up until 7:00 a.m. on the day following the Sunday or Holiday and will be dispatched after the first morning list has been exhausted.

NIGHT WORK: To be eligible for the first night dispatch, longshoremen must sign in on the night list by 3:00 p.m. After 3 p.m. and until 5:00 p.m. men signing in will be considered as on the late list, and will be dispatched if needed. All men not dispatched including men on the late list will be carried over for the following night. Men signing-in after 5:00 p.m. are making themselves available for work the following night.

SUNDAY AND HOLIDAY NIGHT WORK: Longshoremen may sign in until 8:00 a.m. on Sundays or Holidays for work that night and will be eligible for the first dispatch. Men signing in after 8:00 a.m. will be considered on the late list and will be dispatched if needed.

EXCEPTION TO REGULAR SIGN-IN TIME: When an individual working off the Low-Man-Out system is ordered to supper and to return to work, and therefore is unable to sign in for availability the next day, he may, by personally reporting in to the dispatcher at the Hall the next day by 6:30 a.m., be signed-in on the master sheet if he advises the dispatcher what gang he was working with, the name of the company, and the time he was released from the job on the previous night. Violators of this rule will fall under the penalties as provided in these rules.

5. All men signing in on any given list whether they have just left a gang, are returning from vacation or changing from another category will use the average hours of the category into which they are signing if their own accumulated LMO hours are under the average hours. If their own accumulated LMO hours are over the average hours of the category, men must sign in with their actual accumulated LMO hours. If a gang member leaves a gang to sign in all his hours count, voluntary hours included.

6. Average hours are based on the number of men on the first sign-in list for any given dispatch.

EXAMPLE: If there are 100 men on list, it is divided in half and the 50th man is the average. First man has 50 hours; 50th man has 55 hours; the 100th man has 70 hours. Average hours are 55 and each day's average is carried over. If yesterday's average was 50, you add the difference, making today's average 55 hours. You do not add over 8 hours to the previous average, as that constitutes a day's work shift.

7. Any longshoreman who fails to report to the dispatcher after his number is called three times shall add six hours to his signing-in time and must sign in again. In other words, when a man does not answer when his number is called, it is considered the same as working six hours. Men who miss their number when called but take a voluntary job for the same day or night when they missed their work opportunity need not add six hours for missing their call but must add the time worked to their hours when signing in the next time.

8. The dispatchers will give no information as to the location of the job, length of time the job will last, or the type of cargo to be handled prior to handing out the dispatch slip.

9. Longshoremen refusing a job or accepting a job at the dispatch window and then turning slip back in shall be charged with six hours. If they take a job later that day, either voluntary or otherwise, they must add the six hours charged against them plus the time worked when signing in again.

MEN TURNING JOB BACK: Men dispatched by receiving a ticket are to replace themselves only after reporting to the job. Failure to do this and trying to turn the

ticket back to a dispatcher will result in disciplinary action being taken.

10. Any longshoremen, with less than the average hours of the category, who does not make himself "available" for work, or who misses a job opportunity or "flops" must take the average hours of the category when he signs in. If his accumulated LMO sign-in hours are over the average hours of the category, he shall sign in with his total accumulated LMO hours. Availability means being signed in on the master sheet. A missed plug or "flop" constitutes non-availability.

11. Any man signing in whose accumulated LMO hours are 10 or more hours below the average of the category, shall have his hours changed by the dispatcher to the average hours of that particular category for that day or night dispatch period.

12. Longshoremen eligible under the Labor Relations Committee's Rules must remain in any category which they sign into for a period of 30 days and nights and likewise shall remain in either the day or night section where they have signed in for a period of 30 days or nights. Men shall not sign in under two categories at the same time, including the Banana Board and another board.

13. When any given category is exhausted, the next appropriate category shall have the first opportunity to volunteer for the work offered providing the men in that category are otherwise eligible under the Labor Relations Committee Rules and the men with the lowest hours in that category will be dispatched first, and the category will be exhausted before calling for volunteers from another category. Time worked on these volunteer jobs shall be added to the man's hours. These volunteer jobs shall be for one day only and will be filled the following day or night from men in the category required by the job.

(A) Men shall be dispatched in the following order:

1. Class "A" low man in category called.

2. Class "A" late list in category called.

3. Class "A" low men in slowest moving category called.

4. Class "A" gangmen listed on daily sign-in sheet.

(a) Gang men, who are members of gangs not employed during a specific shift, may sign in for work on "gang sign in" sheets from 6:00 a.m. to 7:30 a.m. on the day shift and from 4:00 p.m. to 5:00 p.m. on the night shift.

5. Class "B" longshoremen listed on Class "B" master sheet.

6. Class "A" men who missed their call or "flopped" in category called.

7. Class "A" men who have refused a job or accepted a job and replaced themselves.

8. Class "B" late sheet.

14. SQUARING OFF: Any longshoreman who wants a day off in any one calendar (payroll) week without losing his work opportunity may do so by "squaring off". When squared-off a man's number will not be called. Squaring-off is done by drawing a square around a man's number on the List. This will enable men to have a scheduled day off. No man below average the day before he desires a day off may square-off. No squaring off on straight time day preceding Saturday or Holiday.

Men are entitled to one day off in any one payroll week and the first day missed during the week of work opportunity shall be considered their scheduled day off. If a man has not been available or has "flopped" he is not eligible to square-off for the duration of that particular payroll week.

15. No man shall square-off during the dispatch period.

16. To be eligible for work on Holiday or overtime day, you must be signed in (available for work) or working the day before said days. Any member working six consecutive days can then sign in on the overtime day, or he may work if he so desires.

17. "Checks" will be made each week and violators will receive the following penalties:

First Offense—30 days off
Second Offense—6 months off
Third Offense—Cancellation of Registration.

SPECIAL RULES APPLYING TO CLASS "B" MEN ONLY

(A) Class "B" longshoremen will be dispatched according to applicable current LRC Low-Man-Out rules.

(B) Class "B" longshoremen will sign and work out of a category called the Class "B" board. They will work on either the day or night shift in accordance with assignment by the Ckief Dispatcher.

(C) Class "B" longshoremen dispatched in any category shall be dispatched for one shift only, unless Class "A" men are not available. The Chief Dispatcher is hereby authorized by the Labor Relations Committee to determine that Class "B" men may remain on the job from shift to shift as required by the employer if the work load of the port so justifies. This exception does not apply on overtime days.

These are the only and official rules on the low-man-out system as revised by the Labor Relations Committee up to December 30, 1958. If new rules or changes are needed they will be issued by the Committee.

THERE ARE NO OTHER RULES.

5/27/59

Appendix G

(Exhibit CL)

Longshore Labor Relations Committee
of San Francisco

St. Clair Building
16 California Street

Dispatching Hall
Bulkhead
Piers 16-18

San Francisco 11, Calif.
February 25, 1959

Dear Sir:

You are being given further consideration as an applicant for registration as a Class "B" longshoreman in the port of San Francisco, and you are hereby requested to report for an interview with this Committee, in accordance with the procedure governing Class "B" registration rules and regulations, on ..... at Room A 26—ground floor of Ferry Bldg. (south wing).

You are required to bring with you at that time your Social Security card; also your birth certificate, military discharge, if any, or in lieu thereof, suitable evidence that will be satisfactory to the Committee as to your date of birth. If a naturalized citizen, bring your naturalization papers. If an alien, bring your alien registration papers.

If you are successful in passing the interview, you will next be required to take a thorough physical examination. The cost of the physical examination will be borne by the Joint Labor Relations Committee. If you are accepted for registration, you will be required to pay initially a registration fee of $8.00 to cover a portion of the other costs

of registration, payable prior to registration, and will be required to pay another $8.00 after 60 days following registration as a condition to retaining your registration and as a further payment toward the other costs of the registration procedure.

If you are registered and make the two payments of your registration fee, your registration will nevertheless be subject to termination, revocation or other action by the Joint Labor Relations Committee.*

As a matter of courtesy, we would ask you to advise this Committee if you do not expect to be present at the time designated for oral examination, or if you know that you cannot pass a rigid and thorough physical examination.

We wish to further advise you that should you fail to appear at the time and place designated for your interview, or at the time and place designated for your physical examination, you will be automatically disqualified and stricken from the list as far as further consideration for registration is concerned.

Very truly yours,
J. R. Snyder
Secretary

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*A registered man, if he is not a union member, is required under the contract to pay to the union toward the support of the dispatching hall a sum equal to the prorata share of the expense of support of the hall paid by each member of the union. Failure to make such payments or to abide by other provisions in the contract, working rules or determinations of the Joint Labor Relations Committee can be cause for suspension or loss of registration.

Appendix H

(Exhibit 408)

SUMMARY OF STANDARDS

The following is a summary of the standards adopted and used by the Joint Port Labor Relations Committee in determining whether Class "B" longshoremen should be advanced to Class "A" registration:

1. Any Class "B" longshoreman found to have 10 or more hours of Low Man Out violations shall be considered ineligible for advancement to Class "A" registration.

2. Any Class "B" longshoreman found to have been late in the payment of his pro-rata eight or more times (or six or more times with an otherwise blemished record) shall be considered ineligible for advancement to Class "A" registration.

3. Any Class "B" longshoreman found to have failed to meet the 70% availability requirement for any 30-day period shall be considered ineligible for advancement to Class "A" registration.

4. Any Class "B" longshoreman who has been the subject of one or more employer complaints for intoxication or pilferage that the Joint Port Committee has sustained shall be considered ineligible for advancement to Class "A" registration.

5. The standards shall be applied uniformly and no exceptions shall be made.

Appendix I

(Exhibit 7)

State of California
Department of Employment

California Unemployment Insurance Appeals Board

Decision of the Referee
In the Matter of:

James U. Carter, et al
1267 Page Street, Apt. F
San Francisco, California
Claimants
(See Appendix)

SSA No. 549-30-4015, et al
(See Appendix)

Pacific Maritime Association
16 California Street
San Francisco, California
Employer

Account No. 002-3027

San Francisco Referee Office

Case Number: SF-3033

Time and Place of Hearing:
November 6, 1963
January 13, 15, 17, 20, 1964
February 3, 4, 5, 6, 7, 1964
March 2, 6, 30, 31, 1964
April 1, 1964
San Francisco, California

Parties Present:
Claimants
Employre
Department

The claimants involved herein are set forth on the attached appendix which is made a part hereof as though fully set forth in the decision. In those cases marked with an asterisk the employer appealed from the determinations and rulings of the department holding the claimants were not subject to disqualification under section 1256 of the code and that the employer's reserve account would be subject to charges. In the remainder of the cases the claimants appealed from the determinations of the department holding them subject to disqualification under section 1256 of the code.

In the latter group of cases the department also issued rulings relieving the employer's reserve account of charges.

Oral argument was presented to the referee by the claimants, the employer and by the department in San Francisco on April 1, 1964.

The circumstances and facts involved in the appeals herein being the same or similar and no substantial right of the parties being prejudiced thereby, said appeals are herewith consolidated for decision purposes as provided in section 5029 of Title 22 of the California Administrative Code.

STATEMENT OF FACT

The claimants herein have all been employed in the maritime industry in the San Francisco area since 1959. All said claimants have worked in the classification of limited registered longshoremen, otherwise known as Class B longshoremen.

(See Appendix)

DATE OF MAILING: June 4, 1964

The employer herein is the Pacific Maritime Association, referred to hereinafter as the PMA.

Although the claimants are not members of Local 10 of the International Longshoremen and Warehousemen's Union, referred to hereinafter as the union or as the ILWU, they utilized the hiring hall jointly operated by the union and by the PMA, and for this service paid a prorata share of the costs of operating the hall.

Collective bargaining contracts have existed over the years between the ILWU and the PMA, and the current contract is a continuation of previous contracts and covers the period June 16, 1961 to July 1, 1966. This contract, known as the Pacific Coast Longshore Agreement, provides in parts pertinent to the issues herein as follows:

"8.1 Dispatching Halls.

"8.11 The hiring and dispatching of all longshoremen shall be through halls maintained and operated jointly by the International Longshoremen's and Warehousemen's Union and the Pacific Maritime Association in accordance with the provisions of section 17. There shall be one central dispatching hall in each of the ports with such branch halls as shall be mutually agreed upon. All expense of the dispatching hall shall be borne one-half by the local union and one-half by the employer.

"8.12 Any longshoreman who is not a member of the Union shall be permitted to use the dispatching hall only if he pays his prorata share of the expenses relating to the dispatching hall, the Labor Relations Committee, etc. The amount of these payments and the manner of paying them shall be fixed by the Joint Port Labor Relations Committees.

• • •

"'8.3 Registration.

"8.31 The Joint Port Labor Relations Committee in any port subject to the ultimate control of the Joint Coast Labor Relations Committee, shall exercise control over registered lists in that port, including the power to make additions to or subtractions from the registered lists as may be necessary. In each port there shall be maintained a list of longshoremen showing their registration status under this Agreement. When objecting to the registration of any man members of the Joint Port Labor Relations Committee shall be required to give reason therefor.

• • •

"8.4 Preference of Employment.

"8.41 First preference of employment and dispatch shall be given to fully registered longshoremen who are available for employment covered by section 1 of this Agreement in accordance with the rules and regulations adopted by the Joint Port Labor Relations

Committee. A similar second preference shall be so given to limited registered men. The Joint Coast Labor Relations Committee shall be authorized to effectuate such preferences in such manner and for such times and places as it determines in its discretion.

"8.42 Dispatching of men and gangs shall be under the principle of low-man, low-gang, first to be dispatched, except where local dispatching rules provide otherwise for dispatching of special skilled men and gangs.

* * *

"13.1 There shall be no discrimination in connection with any action subject to the terms of this Agreement either in favor of or against any person because of membership or non-membership in the Union, activity for or against the Union or absence thereof, or race, creed, color, national origin, or religious or political beliefs.

* * *

"17.1 Joint Labor Relations Committees.

"17.11 The parties shall establish and maintain during the life of this Agreement a Joint Port Labor Relations Committee for each port affected by this Agreement, four Joint Labor Relations Committees, and a Joint Coast Labor Relations Committee. Each of said Labor Relations Committees shall be comprised of three or more representatives designated by the Union and three or more representatives designated by the Union and three or more representatives designed by the employers. Each side of the Committee shall have equal vote.

"17.12 The duties of the Joint Port Labor Relations Committee shall be:

"17.121 To maintain and operate the dispatching hall.

"17.122 To exercise control of the registered lists of the Port as specified in 8.3.

"17.123 To decide questions regarding rotation of gangs and extra men.

"17.124 To investigate and adjudicate all grievances and disputes according to the procedure outlined in this section 17. . . ."

* * *

The issue affecting each of the claimants herein has to do with the deregistration of such claimants and their consequent ineligibility to continue working as longshoremen in the maritime industry. The aforementioned sections of the Agreement serve to provide for the establishment of the Joint Port Labor Relations Committee and for the registration of longshoremen either on a fully registered basis or on a limited registration basis. Under the authority provided by the aforementioned sections as they were set forth in previous agreements between the ILWU and the PMA a "memorandum" was prepared on March 18, 1958 establishing the rules covering registration and deregistration of longshoremen in the Port of San Francisco. This memorandum provides in paragraph 1 that longshoremen shall fall into two categories: (A) registered longshoremen, and (B) limited registration longshoremen.

Paragraph 3 of the aforementioned memorandum provides in detail for a "limited registration list" in the following language:

"(a) A limited registration list (Class B) shall be jointly prepared by the parties.

"(b) The limited registration list (Class B) shall be revised annually (or semi-annually if the Joint Labor Relations Committee so determines) so that the names thereon are arranged in sequence on the basis of availability for all work dispatched as shown on the records of the San Francisco Dispatch Hall, the Joint Labor Relations Committee, and the Central Pay Office for the preceding year. A man will be given credit for 100-percent availability in any week in which he was either signed in or was at work on six days and had no flops. Availability is willingness and

availability to take any type of work at any time it is offered and regardless of the duration of the job.

* * *

Paragraph 6 provides for joint action on applications:

"(a) Applications for registration and for limited registration must be approved by both parties. Consideration shall be given to each applicant's work history and all phases of his qualifications to do all the work of longshoremen.

"(b) De-registration for cause from the limited registration list (Class B) or from the registration list (Class A) shall exclude a man from a place on either registration list.

* * *

Paragraph 7 provides for additions to the list of fully registered longshoremen:

"(a) Additions to the registration list (Class A) shall be made solely on the basis of applications from the limited registration list (Class B). The men at the top of the limited registration list shall be given in sequence first opportunity to apply for full registration. Additions shall be made after notice, in the number and at the time fixed by the Joint Labor Relations Committee. Each application shall be reviewed on the basis of the standards set forth in Paragraph 6 above with consideration of ability, efficiency, experience, regular availability and other relevant factors.

* * *

Paragraph 9 provides for the deregistration of limited registration (Class B) longshoremen.

"(a) A Class B longshoreman may be de-registered in accordance with the provisions of Section 16(f) of the Basic Longshore Agreement and, in addition, he may be de-registered for cause by the Joint Labor Relations Committee (in accordance with such rules or uniform procedures as may be established or followed by such Committee) if the Committee finds:

"(i) That he has made any significant misstatement or misrepresentation in his application or interview.

"(ii) That he has failed, without leave of absence or adequate reason or excuse, to register at the Dispatch Hall for a period of four consecutive weeks, such de-registration to be effective as of the beginning of such four week period.

"(iii) That he has obtained and is engaged in other work or employment on a full time basis except with the approval or upon authorized leave of absence of the Joint Labor Relations Committee.

"(iv) That over a period of three months or more he has had a poor work record as evidenced by frequent failures to sign-in, flops or other facts indicating that he has not made himself available for full time dispatch through the Hall, except where he is on leave of absence for illness, disability or for other reason approved by the Joint Labor Relations Committee.

"(v) That he has failed to make himself available for any work or shifts to which he may have been assigned by the Joint Labor Relations Committee.

"(vi) That he is physically unable to do the work of longshoremen, except where his disability has been incurred by industrial injury or disease occurring during the course of his employment as a longshoreman on the limited registration list.

"(vii) That he fails to develop in respect to the abilities or knowledge requisite to the performance of longshore work and/or if he fails to participate in the longshore training program jointly established by the parties.

"(viii) That he fails to participate where he is involved, in procedures established to provide contract compliance, or that he has violated any other contract provision for which registered longshoremen may be penalized and fails to submit to

discipline or penalty regularly provided in the case of registered longshoremen.

"(ix) That he has been working in a manner which endangers the safety of other longshoremen.

"(x) That he failed to take a physical examination as required by the Joint Port Labor Relations Committee or failed to submit the full report thereof to the Joint Port Labor Relations Committee.

"(xi) Or for any other cause; provided that neither membership or nonmembership in the union nor activity or nonactivity for or against the union, shall be a factor in considering applications for registration or in de-registration.

"(b) Either party, if it shall have information indicating that a Class B longshoreman is subject to de-registration for cause, may, at a regular meeting of the Joint Labor Relations Committee propose the de-registration of such Class B longshoreman and submit to the Committee any evidence in support thereof; if after consideration of the evidence submitted, the parties jointly concur in the proposal to de-register such Class B longshoreman, he shall be de-registered as of the last day on which he worked as a longshoreman; however, notice of such action taken shall be given by ordinary mail to the person so de-registered, and upon proper application in writing, having been made to the Joint Labor Relations Committee by such person within fifteen (15) days after the mailing of such notice, said person so de-registered shall be given a hearing by said Joint Labor Relations Committee at which hearing he may submit evidence as to the facts considered by the Committee and others relevant to de-registration; in the event that the Joint Labor Relations Committee, after such hearing shall be satisfied that the person de-registered has shown that he was de-registered contrary to the rules, because of material mistake of facts or otherwise, and there was no ground for his de-registration, it may by unanimous vote rescind such de-registration; otherwise said de-

registration shall be effective as of the date on which such de-registered person last worked as a longshoreman. Such notice of de-registration shall be by letter. . . ."

In the early part of 1963, the Joint Port Labor Relations Committee announced that the list of Class A registered longshoremen was to be expanded. Under the provisions in the memorandum covering the registration of longshoremen, both the employer and the union must agree on the longshoremen to be registered. To this end, both the union investigation committee and the Joint Port Labor Relations Committee reviewed the records of all Class B limited registration longshoremen who had applied for Class A registration. This meant that the records would be reviewed in respect to the payment of the pro rata share cost of operating the hiring hall, low-man-out violations, availability and prior violations.

The claimants herein had become limited registration Class B longshoremen in 1959 and thereafter continued working in the maritime industry in that capacity until their deregistration on June 17, 1963.

During this period, the claimants were dispatched from the jointly operated hiring hall and paid their pro rata share of the costs thereof. The examination of the records of the claimants showed that on those occasions when they had been late in paying their pro rata share they paid the prescribed fine or penalty of $1 for each day of tardiness. In all cases, the claimants were current in their payments when they were under consideration for reclassification to fully registered longshoremen.

During the period from 1959 to June 17, 1963, some of the claimants had been penalized in one form or another because of a lack of availability or a failure to perform duties assigned. In each instance, the procedures were

followed to bring the matter before the proper committee and, in each instance, penalties were assessed and served by the limited registration longshoremen involved.

Almost all the men herein became involved at one time or another in violations of the low-man-out (LMO) procedure, whereby a careful accounting is kept of hours worked in order that there may be a proper distribution and equalization of work. The rules governing LMO are long, complicated and detailed and cover all contingencies which might arise in connection with the dispatch to work and the maintenance of a record of hours worked.

These rules are set forth in memorandum form entitled:

"SAN FRANCISCO PORT LABOR RELATIONS COMMITTEE RULES AND REGULATIONS GOVERNING LOW-MAN-OUT SYSTEM OF DISPATCH FOR INDIVIDUAL LONGSHOREMEN"

These rules provide generally that Class A longshoremen have a preference over Class B longshoremen in respect to work. In order to be dispatched, a longshoreman must register and be available for work. Lonshoremen who fail to report to the dispatcher after their number is called are obliged to add six hours to their signing in time. This is comparable to working six hours and adds this number of hours to the longshoreman's total hours in determining when he will be dispatched again. Longshoremen with less than the average number of hours of work who do not make themselves available for work or who miss a job opportunity or "flop" must take the average number of hours in their category when they again sign in. A longshoreman may indicate his unavailability for work without penalty on one day a week by "squaring off." This is done by drawing a square around his name or number on the registration list. Work is assigned by the dispatcher to the longshoreman having the least number of hours of work.

Article 17 of the memorandum provides as follows:

> "'Checks' will be made each week and violators will receive the following penalties:
>
> First offense—30 days off;
> Second offense—six months off;
> Third offense—cancellation of registration."

The memorandum of rules then closes with the statement that such rules are the only official rules on the low-man-out system and that "there are no other rules."

After filing applications for reclassification to Class A registered longshoremen, the claimants herein were the recipients on or about June 17, 1963 of a notice that they were deregistered for cause as Class B longshoremen.

At a meeting of the Longshore Labor Relations Committee on July 16, 1963, the Minutes show the following action in respect to Class B longshoremen:

> "The Union submitted the following motions relative to the registration and de-registration of Class "B" longshoremen.
>
> 1. That all B men who are on appeal and who have not been promoted solely because of Low-Man-Out violations shall be given 30 days off as per contract and promoted to A registration.
>
> 2. That the Labor Relations Committee be instructed that all B men who are on appeal and have not been promoted solely because of pro-rata violations shall be re-registered and moved to A registration.
>
> "Employers took the Union's motions under advisement.
>
> "Meeting recessed at 12:00 Noon.
>
> "Meeting reconvened at 10:30 a.m., July 19, 1963 in Room 202, 16 California Street.

"Present:

For Employers	For ILWU, Local 10
L. R. Hartgrave	J. Kearney
J. Trupp	R. Harp
J. Edwards	J. Perez

"Also present for the Employers: R. Ernst.

"Also present for the Union:

W. Chester
R. Rohatch
C. Hoffman
T. Silas

"This meeting was reconvened for the purpose of considering the two Union motions regarding Class "B" longshoremen.

"Employers stated they are in disagreement with the Union's motions on the basis that the Employers are not agreeable to changing the procedures and rules governing registration and deregistration previously agreed to by the parties. These procedures and rules are in accordance with the contract. The action taken by the Joint Committee with respect to the persons referred to in the Union's motion were in accordance with these jointly approved rules. The detailed rules were worked out by the parties and specifically agreed to. The parties long ago agreed as to what would be good cause for deregistration. They agreed, furthermore, that if there was such good cause as to any one of the applicants for Class B registration, each of these would be deregistered. They further agreed that where there was not good cause for deregistration and the man met the other JLRC requirements, then he would be advanced to "Class A" full registration. When rules are agreed upon the LRC needs to enforce them uniformly or we will end up with no one living up to our LRC rules. These rules were adopted to provide a uniform basis under which the committee would act. If we change the rules in the middle of the process, we will have no basis for operating fairly and equally to all concerned. Furthermore, to start changing the

rules at this stage would delay the registration procedures.

"Employers stated they would note NO on both Union motions.

The notice of June 17, 1963 also stated that such deregistration was based upon the determination of the Joint Port Labor Relations Committee that the claimants had violated the applicable rules and that it was for this reason that they were being deregistered. The notice also provided for an appeal to be filed within 15 days. The claimants herein all filed appeals and were given the opportunity of a hearing before the Joint Port Labor Relations Committee meeting at Pier 24 on the San Francisco Waterfront on or about July 23, 1963. At this proceeding they were informed of the grounds of their deregistration and given an opportunity to set forth their disagreement therewith. In matters involving low-man-out and pro rata late payments, the claimants were referred to the record-keeping facilities of the jointly operated hiring hall and the treasurer's office of the union. A day certain was set for them to make such a personal investigation and, for the most part, the claimants herein reviewed such records. Although this review revealed some discrepancies, nevertheless in each case there continued to be indications that there were errors in reporting under the LMO system and that there were times when the pro rata payment was late. When the claimants learned that they had not prevailed in their appeal, they indicated that they wished to proceed further in the appeal process and such matters are currently pending.

The claimants maintained that they had been limited registration longshoremen since 1959 and that they had complied with all the rules and regulations governing their employment. Although conceding that there were times when pro rata payments were late or that there were violations, they maintained that in each instance the authorized

penalty or assessment was made and satisfied. In complying with the rules, they were not aware that there was any carry-over in respect to deficiencies; and, by the deregistration action of the Joint Port Labor Relations Committee, the claimants maintained they were subjected to what was comparable to "double jeopardy" in that they were being penalized a second time for deficiencies for which they had already been penalized.

The employer in turn contended that when the claimants herein did not abide by the operating rules they were acting adversely to the interests of the employer, the Union and the Joint Port Labor Relations Committee. In respect to the low-man-out procedure, they were considered to be "chiseling" and thereby obtaining work to which they were not entitled at the expense of their fellow longshoremen.

Claimant Johnson (ID-82) appeared and testified, but the evidence elicited was not pertinent to the issues. While this might be attributed to the claimant's attitude toward the hearing, nevertheless there appeared to be a degree of confusion which affected the claimant's presentation. Basically, the underlying factors which were developed in the other cases were also present in the claimant's case, even though the claimant did not bring this out in his testimony.

REASONS FOR DECISION

A careful consideration of the facts shows that the claimants herein were employed in the maritime industry as Class B or limited term longshoremen. As such, these claimants were not union members but were merely permitted to use the hiring hall for dispatch purposes for which they paid a fee calculated on the pro rata cost of operation of such hall.

Their association with the industry came to an end when they were "de-registered" by the Joint Port Labor Relations Committee, composed in equal parts by representation from the International Longshore and Warehouseman's Union, Local 10, and the Pacific Maritime Association.

The determination and ruling of the department and the primary facts show that the issue involved herein comes within the scope of section 1256 of the Unemployment Insurance Code. This section provides that an individual is disqualified for benefits if he has been discharged for misconduct connected with his most recent work or if he left the most recent work voluntarily without good cause.

The questions presented are two in number and are mutually exclusive. First, if the claimants herein voluntarily left their work, did they do so without good cause? Secondly, if the within claimants were discharged by their employer, was such discharge for misconduct?

In determining whether there has been a voluntary leaving of work or a discharge under section 1256 of the code, the California Unemployment Insurance Appeals Board reasoned in Benefit Decision No. 6590 that a discharge takes place where the employer is the moving party in terminating the employment and that a voluntary leaving of work occurs where the employee is the initiating party in bringing the employment relationship to an end.

In Appeals Board Benefit Decision No. 5869, the claimant was working as a service station attendant under the direct supervision of a manager who did not have authority to discharge him, as that authority was retained by the district supervisor. The claimant committed an error in respect to the performance of his duties and was notified by the station manager that he would not be permitted to work pending the supervisor's return from vacation. The manager recommended to the claimant that he resign, which

the claimant did. It was shown that the district supervisor would not have reinstated the claimant or transferred him to another station. It was held therein by the Unemployment Insurance Appeals Board that the claimant could not be held to have left his work voluntarily in a situation where the employer had the choice of retaining his services or discharging him. It was unquestioned in the cited case that the claimant was willing to continue performing services for the employer but that the employer would not permit the claimant to perform his duties. It was held therein that the issue was one of a misconduct discharge and, under the facts of the case, it was further held that the claimant had not been discharged for misconduct within the meaning of the law (Appeals Board Benefit Decisions Nos. 6469 and 6746).

The case referred to hereinabove is applicable in principle to the instant matter in that the choice of retaining the services of the claimants herein was residual in the Joint Port Labor Relations Committee. It was within their discretion to continue the claimants as registered longshoremen or to abruptly bring this relationship to an end by deregistration. However, there are further considerations which must be treated before it can be said that the claimants herein were discharged or, on the other hand, whether they had voluntarily set in motion a series of events which brought about their unemployment and thus could be held to have constructively voluntarily left their work.

In Appeals Board Benefit Decision No. 6719 the claimant was a union committeeman in the plant in which he worked and in that capacity initiated a grievance for a fellow employee which was very strongly worded. As a result of this written grievance, the claimant was suspended. It was held in that case that, although a disciplinary suspension is usually deemed to be a voluntarly leaving of work, yet the

claimant in the cited case did not wilfully violate the shop rule which precluded publishing of malicious or vicious statements concerning any employee, supervisor, or the company. The Appeals Board utilized the following language in reaching their conclusion:

> "We do not believe that every disciplinary suspension resulting from violation of an employer rule must result in a finding that the claimant left work voluntarily and without good cause. It must be shown by a preponderance of the evidence that the claimant embarked on a course of action which he knew was in violation of such rule and which he knew could result in the employer taking disciplinary action."

It was accordingly held that the claimant was involuntarily unemployed and not subject to disqualification under section 1256.

In *Sherman/Bertram, Inc.* v. *California Department of Employment, et al.*, 202 CA(2) 733, 21 Cal Rep. 130, the issue was whether an employee unable to return to his work because he had been incarcerated for the commission of a felony, voluntarily quit his job without good cause. Reference was made therein to section 100 of the Unemployment Insurance Code which provides in part "for the compulsory setting aside of funds to be used for a system of unemployment insurance providing benefits for persons unemployed through no fault of their own . . . ." It was pointed out in the decision that the afore-mentioned section of the code establishes that *fault* is a basic element to be considered in interpreting and applying the code sections on unemployment compensation. In deciding that the claimant by his action had voluntarily quit his most recent work without good cause and had not been discharged, reference was made to Appeals Board Benefit Decision No. 5309, wherein it was stated:

> "While it would appear that the claimant herein may not have actually intended to bring about his unemployment, he did nevertheless voluntarily embark upon a course of conduct, the very nature of which he knew, or must be conclusively presumed to have known, would jeopardize his return to work within the allotted time."

In the *Sherman/Bertram* case, it was held that the claimant's loss of employment was the result of an act of volition on his part and tantamount to a voluntary leaving without good cause.

It is worthy of note that the cited cases emphasize the necessity of "fault" being present and that the claimant in each instance knew or should have known that his actions would jeopardize his employment.

In order to evaluate the circumstances in the instant case with the cited cases, it is necessary to review briefly the circumstances in which the claimants are found. They had worked since 1959 as longshoremen and, as such, were subject to the rules and regulations that have been hereinabove set forth. In this capacity they were obliged to pay a pro rata cost of the hiring hall, which they all did, even though at times they were late with such payments. It is worthy of comment, however, that as of the date that consideration was given to them for reclassification as Class A longshoremen, they were all in a current condition in respect to their pro rata payments. In each such instance the individuals had paid the $1 per day fine, which was established for tardy payments and in each such instance, the man continued fully eligible to be dispatched to work as a Class B longshoreman and was in fact dispatched as such over the years involved.

Similarly, some of the claimants herein had been subjected to penalties in connection with violations of the "low-man-out" rule. It is true that errors had occurred in re-

spect to the hours used by some of the claimants herein. Such errors had occurred in some cases because of a rule adopted by the dispatcher in connection with Sundays and, in other cases, it was because of lack of knowledge and understanding of the rules and confusion in the minds of the claimants as to the proper hours to be used. In each such instance the claimants had been continued in employment until the decisive action of the Joint Port Labor Relations Committee which is the subject matter of the instant case.

Some of the claimants had also been involved in a lack of availability and in each instance served the penalty that had been imposed in this connection. Other violations of rules and regulations had been handled in each instance at the time of commission and the claimants had been continued in their Class B classification.

These are all circumstances which differ materially from the cases cited which have to do with the consideration of activities which would constitute a constructive voluntary leaving of work. It is to be noted that a substantial number of the cited cases deal with incarceration and the wilful act of the individual claimant in bringing about the circumstances which resulted in his confinement and consequent inability to return to employment. In the instant case, the acts of the claimants over the years did not involve incarceration although at times a period of suspension was imposed in respect to some of the violations. In every instance, however, the claimants had "cleared the record" at the time that they made their application for the advancement in classification.

After analyzing all the facts it is inherently impossible to believe that the claimants herein could logically have been expected to anticipate that their acts would result in the loss of their employment. In brief, the claimants did not embark on a course of action which they knew or should

have known would result in the loss of their employment. At a matter of fact, over the years a pattern of behavior was established which was condoned and allowed by the employer, the union and the Joint Port Labor Relations Committee. This pattern was such that violations were handled according to the rules and provisions of the contract and memorandums and each man continued as a limited registration longshoreman.

The choice of retaining the claimants' services or discharging them was retained by the Joint Port Labor Relations Committee and, therefore, the act of terminating the employment relationship originated with the committee and the claimants must, therefore, be held to have been discharged.

The question then remaining is whether or not such discharge was for misconduct within the scope and meaning of section 1256 of the Unemployment Insurance Code.

In Appeals Board Benefit Decision No. 6050, it was held that to establish misconduct the evidence must show that the claimant was discharged because of a material breach of duty owed the employer under the contract of employment which breach tends to injure substantially the employer's interest.

A careful analysis of the facts shows that during the period of the claimants' employment from 1959 to June 17, 1963, they were retained as registered Class B longshoremen and as such were dispatched to such employment as became available through the hiring facilities of the jointly operated hiring hall. During this period of employment, as has been indicated hereinabove, all the claimants became involved to a more or less extent with one or more of the stated violations of the rules adopted for their conduct. Again, emphasis must be placed upon the fact that violations in respect to the working rules or in respect to avail-

ability were considered at the time of occurrence and penalties were assessed. Those penalties being satisfied, the individuals were continued as Class B longshoremen and were dispatched to employment as it arose. If the Joint Port Labor Relations Committee was harmed in any way or if the companies for whom the services were performed through the facilities of the Joint Port Labor Relations Committee were jeopardized, such acts against the employer's interest were condoned and abrogated by the imposition of the penalty and the satisfaction thereof.

In connection with the violations of the pro rata payment and the "low-man-out" rule, it is especially noteworthy that the principal party to be aggrieved by such violations was the International Longshore and Warehousemen's Union, inasmuch as such violations affected the financial operation of the hiring hall and also was of a nature whereby the so-called "chiseling" of the claimants was to the detriment of the members of the union. Yet, despite these acts which would jeopardize the union organization rather than the employer organization or the Joint Port Labor Relations Committee, the ILWU at the meeting of the Joint Port Labor Relations Committee, on July 16, 1963, moved that individuals involved in LMO violations and pro rata payment violations be reregistered and moved to Class A registration. This would indicate that the principal party which would be aggrieved by the acts of the claimants was not in fact aggrieved and that the grievance was not of a nature which would preclude the union desiring such individuals to be promoted to the higher classification and accepted into membership.

When these circumstances are consirered along with the fact that violations of the LMO program would in no way jeopardize the functions of the Joint Port Labor Relations Committee and that said Joint Port Labor Relations Com-

mittee had previously condoned the other violations that are involved herein, it is concluded that there is serious doubt that the acts of the claimants constitute misconduct within the meaning of sections 1256 and 1030 of the Unemployment Insurance Code. A careful review of the minutes of the meeting of July 16, 1963 shows that the lack of unanimity on the part of the Joint Port Labor Relations Committee in respect to reregistering the claimants and others involved in the deregistration proceedings was based upon the principle that there should be a uniform basis under which the committee would act. "If we change the rules in the middle of the process, we will have no basis for operating fairly and equally to all concerned."

These circumstances and the reasons advanced for not reregistering the claimants serve to establish that the claimants herein failed to meet the standards, or the requirements, established by the Joint Port Labor Relations Committee. In this respect, the conclusion of the Unemployment Insurance Appeals Board, in Benefit Decision No. 6223, is applicable. Therein it was held that inability to satisfy an employer's standards as to the quality or quantity of work does not constitute misconduct so long as there is no wilful or intentional disregard of the employer's interests. The circumstances herein are such, and the evidence serves to establish, that the claimants desired to continue working and that they had no reason to believe that violations occurring over a period of three or four years, for which proper penalty had in each instance been made, would result in the loss of their employment. Their acts were not of a nature to be wilful or indicative of intentional disregard of the interests of the Joint Port Labor Relations Committee. The action of the committee in deregistering the claimants is clearly indicative of the failure of the claimants to meet the standards desired by the committee. A discharge under such circumstances is not for misconduct

within the scope and meaning of sections 1256 and 1030 of the Unemployment Insurance Code.

The testimony of claimant Johnson (ID-82) shows a degree of confusion in respect to the issues involved. The circumstances surrounding the deregistration of claimant Johnson differed in no major way from the circumstances in which the other claimants were involved. Even though claimant Johnson as an appellant did not establish a prima facie case by his own testimony, the facts developed in the remainder of the hearing as they pertain to the issues herein are applicable to his situation and accordingly it is also held that his discharge was not for misconduct within the meaning of sections 1256 and 1030 of the code.

DECISION

The determinations and rulings of the department are affirmed, reversed or modified to hold all the claimants herein not subject to disqualification under section 1256 of the code and the employer's reserve account subject to charges under sections 1030 and 1032 of the code.

Dated: May 14, 1964

DONALD GILSON, Referee

THIS DECISION IS FINAL UNLESS AN APPEAL IS FILED WITHIN TEN DAYS. FOR APPEAL RIGHTS SEE ATTACHED NOTICE.